

STROUD'S
JUDICIAL DICTIONARY
OF
WORDS AND PHRASES

FIFTH EDITION

BY

JOHN S. JAMES

Barrister-at-Law

103301

VOLUME 5

S—Z

LONDON
SWEET & MAXWELL LIMITED

1986

340.03
STR-V

First Edition by F. Stroud, 1890
Second Edition by F. Stroud, 1903
Supplement by F. Stroud, 1906
Supplement by Elsie Wheeler, 1930
Supplement by John Burke, 1947
Third Edition 1951-53
Under the General Editorship of
J. Burke and P. Allsop
First Supplement 1956
Second Cumulative Supplement 1965
by L. Loewe and Charles Moss
Fourth Edition by John S. James, 1971
First Supplement by John S. James, 1979
Second Cumulative Supplement by John S. James, 1982
Fifth Edition by John S. James, 1986

Published by
Sweet & Maxwell Ltd. of
11, New Fetter Lane, London
Computerset by Promenade Graphics Ltd., Cheltenham
and printed in Great Britain by Hazell, Watson & Viney Ltd.,
Member of the BPCC, Aylesbury, Bucks.

British Library Cataloguing in Publication Data

Stroud, Frederick

Stroud's judicial dictionary of words and phrases.

—5th ed.

1. Law—Great Britain—Dictionaries

I. Title II. James, John S.

344.108'6 KD313

ISBN 0-421-29900-2 v. 1

ISBN 0-421-30020-5 v. 2

ISBN 0-421-30030-2 v. 3

ISBN 0-421-30030-X v. 4

ISBN 0-421-30050-7 v. 5

ISBN 0-421-37130-7 v. 6

ISBN 0-421-36630-3 set of 6 volumes

The paper used in this publication meets the minimum requirements of the
American National Standard for
Permanence of Paper for Printed Library
Materials. Z 39 . . . 1984.



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or transmitted, in any form or by any means, electronic,
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1986

TABLE OF ABBREVIATIONS

Note. The use of SMALL CAPITALS throughout the book, suggests a reference to the word or phrase so printed.

Where dates are given in the last column of this table, that indicates that the item against which it appears is a series, or volume, of Reports of Cases, and these dates also indicate the period covered by such reports.

A

A.B.C.	Australian Bankruptcy Cases.....	1928-1964
A.C. (preceded by date)	Law Reports, Appeal Cases	1891-
A.L.J.	Australian Law Journal	1927-
A.L.R.	Argus Law Reports	1895-1981
A.L.R.	Australian Law Reports	1982-
A.L.J.R.	Australian Law Journal Reports	1927-
A.R. (N.S.W.)	Industrial Arbitration Reports, New South Wales	1902-
A. & E.	Adolphus and Ellis	1834-1841
Abbott	Abbott on Merchant Ships and Seamen.	
Abb.	Abbott's United States Circuit Court Reports.	
Addams	Addams Ecclesiastical Reports	1822-1826
Add. C.	Addison on Contracts.	
Add. T.	Addison on Torts.	
Al. & N.	Alcock and Napier.	
Ala.	Alabama Reports.	
Aleyn	Aleyn	1646-1649
All E.R. (preceded by date)	All England Reports	1936-
Allen	Allen's Massachusetts Reports.	
Amb	Ambler	1737-1783
And.	Anderson	1558-1603
Ann. Pr.	Annual Practice.	
Anstr.	Anstruther	1792-1796
App. Cas.	Law Reports, Appeal Cases	1875-1890
	(<i>Note.</i> In and since 1891 these reports are cited by the year, e.g. [1891] A.C.)	
Arch. Bank	Archbold on Bankruptcy.	
Arch. Cr.	Archbold's Pleading and Evidence in Criminal Cases.	
Arch. P.L.	Archbold's Poor Law.	
Arn.	Arnould on Marine Insurance.	
Arnold	Arnold	1838-1839
art.	Article.	
Asp.	Aspinall	1871-1943
Atk.	Atkyns	1736-1755
Att.-Gen., A.-G.	Attorney-General.	

B

B.W.C.C.	Butterworth's Workmen's Compensation Cases	1907-1949
B. & Ad.	Barnewall and Adolphus	1830-1834
B. & Ald.	Barnewall and Alderson	1817-1822
B. & Aust.	Barron and Austin	1842
B. & C.	Barnewall and Cresswell	1822-1830
B. & F.	Broderick and Fremantle	1840-1865
B. & Macn.	Browne and Macnamara; but generally herein cited as Ry. & Can. Traffic Cas.	
B. & P.	Bosanquet and Puller	1796-1804
B. & P.N.R.	Bosanquet and Puller, New Reports	1804-1807
B. & S.	Best and Smith	1861-1870
Bac. Ab.	Bacon's Abridgment.	
Bail C.C.	Bail Court Cases (sometimes called Lowndes & Maxwell)	1852-1854
Baldwin	Baldwin on Bankruptcy.	

Ball & Beatty	Ball and Beatty	1807-1814
Barb. (N.Y.)	Barbour's New York Supreme Court Reports.	
Barnardiston C.C.	Barnardiston's Chancery Cases	1740-1741
Barnes	Barnes' Notes of Cases	1732-1760
Baxter	Baxter's Tennessee Reports.	
Bea.	Beavan	1838-1866
Beatty	Beatty	1814-1836
Bell C.C.	Bell, Crown Cases	1858-1860
Benedict	Benedict's United States District Court Reports.	
Benj.	Benjamin on Sales of Personal Property.	
Beven	Beven on Negligence in Law.	
Bing.	Bingham	1822-1834
Bing. N.C.	Bingham, New Cases	1834-1840
Bl. Com.	Blackstone's Commentaries, the paging being that of the 5th ed.; the edition chiefly used being the 12th by Christian, wherein Blackstone's last paging is pre- served in the margin.	
Bl. H.	Blackstone, Henry	1788-1796
Bl. W.	Blackstone, William	1746-1780
Blackb.	Blackburn on Sales.	
Bligh	Bligh's Reports of Cases in the House of Lords	1819-1821
Bligh N.S.	Bligh, New Series	1827-1837
Bott	Bott	1768-1827
Bowstead	Bowstead on Agency.	
Bro. C.C.	Brown's Chancery Cases	1778-1794
Brod. & B.	Broderip & Bingham	1819-1822
Brown P.C.	Brown's Parliamentary Cases	1702-1800
Brown. & Lush.	Browning & Lushington	1863-1866
Brownl. & Gold.	Brownlow and Goldesborough	1558-1625
Buckl.	Buckley on the Companies Acts.	
Build L.R.	Building Law Reports	1976-
Bulst.	Bulstrode	1603-1649
Bunb.	Bunbury	1713-1742
Burr.	Burrow	1756-1772
Burr S.C.	Burrow's Settlement Cases	1732-1776
Byles	Byles on Bills of Exchange and Promissory Notes.	

C

c.	Chapter (of Act of Parliament).	
C.A.	Court of Appeal.	
C.A.R.	Commonwealth Arbitration Reports	1905-
C.B.	Common Bench Reports	1845-1856
C.B.N.S.	Common Bench Reports—New Series	1856-1865
C.C.A.	Court of Criminal Appeal.	
C.C.C.	Canadian Criminal Cases	1893-
C.C.R.	County Court Rules.	
C.L.	Current Law Yearbooks	1947-
C.L.R.	Commonwealth Law Reports	1903-
C.L.Y.	Current Law Yearbook.	
C.M.L.R.	Common Market Law Reports	1962-
C.P.D.	Law Reports, Common Pleas Division	1875-1880
C.P.R.	Canadian Patent Reports	1939-
C.R.	Criminal Reports (Canada)	1946-1967
C.R.N.S.	Criminal Reports (Canada) New Series	1967-
C.T.C.	Canada Tax Cases	
C. & K.	Carrington and Kirwan	1843-1853
C. & M.	Carrington and Marshman	1841-1842
C. & P.	Carrington and Payne	1823-1841
Ca. t. Hard.	Cases, temp. Hardwicke	1733-1737
Ca. t. Talb.	Cases in Equity, temp. Talbot	1733-1737
Cab. & El.	Cababe and Ellis	1882-1885
Cal.	California Reports.	
Cald.	Caldecott's Settlement Cases	1776-1785
Callis	The Reading of Robert Callis on the Statute of Sewers, 23 Hen. 8, c. 5, delivered by him at Gray's Inn, August, 1622.	
Camp.	Campbell	1807-1816
Carp.	Carpmael's Patent Cases	1602-1842

Carter	Carter	1664-1676
Carth.	Carthew	1668-1701
Carver	Carver on Carriage of Goods by Sea.	
Ch. (preceded by date)	Law Reports, Chancery	1891-
Ch.	Law Reports, Chancery Appeals	1865-1875
Ch. Ca.	Cases in Chancery	1660-1693
Ch. D.	Law Reports, Chancery Division	1875-1890
	(Note. In and since 1891 these Reports are cited by the year and volume, e.g. [1891] 1 Ch.)	
Ch. Rep.	Reports in Chancery	1625-1710
Challis	Challis on Real Property.	
Chalmers	Chalmers on Bills of Exchange.	
Chaney (Mich.)	Chaney's Michigan Reports.	
Chitty	Chitty	{ Vol. I, 1819, Vol. II, 1770- 1822
Chitty Eq. Ind.	Chitty's Equity Index.	
Cl. & F.	Clarke and Finelly	1831-1846
Co. Litt.	Coke upon Littleton, the edition here used being the 18th by Hargrave & Butler.	
Col.	Colorado Reports.	
Coll.	Collyer	1844-1846
Colt, Reg. Cas.	Cotlman, Registration Cases	1879-1885
Com.	Comyn	1696-1740
Com. Cas.	Commercial Cases	1895-
Com. Dig.	Comyn's Digest.	
Com. L.R.	Common Law Reports	1854-1855
Com. L.R. (preceded by date)	Commercial Law Reports	1981-
Con. & L.	Connor & Lawson	1841-1843
Conv. (N.S.)	Conveyancer and Property Lawyer (New 1936, current Series).	
Cooper, C.P.	Cooper, Charles Purton	1837-1838
Cooper, G.	Cooper, George	1815, with a few earlier cases in and from 1792
Cooper t. Brougham	Cooper, Charles Purton, temp. Brougham	1833-1834
Cooper t. Cott.	Cooper, Charles Purton, temp. Cottenham	1846-1848
Coote	Coote on Mortgages.	
Cowel	Cowel's Interpreter by Tho. Tanley, 1672.	
Cowen	Cowen's New York Reports.	
Cowp.	Cowper	1774-1778
Cox C.C.	Cox's Criminal Cases	1843-1945
Cox Ch.	Cox's Chancery Cases	1745-1797
Cp.	Compare.	
Cr.App.R.	Criminal Appeal Reports	1908-
Cr.L.Q.	Criminal Law Quarterly (Canada)	
Cr. M. & R.	Crompton, Meeson & Roscoe	1834-1835
Cr. & Dix	Crawford and Dix	1839-1846
Cr. & Dix Ab. Cas. ..	Crawford and Dix, Abridged Notes of Cases	1837-1838
Cr. & J.	Crompton and Jervis	1830-1832
Cr. & M.	Crompton and Meeson	1832-1834
Cr. & Ph.	Craig and Philip	1840-1841
Cranch	Cranch's United States Supreme Court Reports.	
Crim. L.R.	Criminal Law Review	1954-
Cro. Car.	Croke, temp. Charles I, Elizabeth, James I	1581-1641
Cro. Eliz.		
Cro. Jac.		
Cru. Dig.	Cruise's Digest of the laws of England Respecting Real Property.	
Cty. Ct.	County Court.	
Cunningham	Cunningham's K.B. Cases, 3rd. ed.	1734-1735
Curt	Curtis	1834-1844
Cush.	Cushing's Massachusetts Reports.	

D

D.C.	Divisional Court.	
D.G.	De Gex	1844-1848

D.G. & J.	De Gex and Jones	1856-1859
D.G. & S.	De Gex and Smale	1846-1852
D.G.F. & J.	De Gex, Fisher and Jones	1859-1862
D.J. & S.	De Gex, Jones and Smith	1862-1865
D.G.M. & G.	De Gex, Macnaughten and Gordon	1851-1857
D.L.R.	Dominion Law Reports	1912-
D.T.C.	Dominion Tax Cases	
D. & M.	Davison and Merivale	1843-1844
D. & R.	Dowling & Ryland	1822-1827
D. & Sw.	Deane and Swabey	1855-1857
Daly	Daly's New York Common Pleas Reports.	
Dan. Ch. Pr.	Daniell's Chancery Practice.	
Dart	Dart on Vendors and Purchasers.	
Dea. & C.	Deacon & Chitty	1832-1835
Deacon	Deacon	1835-1840
Dears.	Dearsley, Crown Cases	1852-1856
Dears. & B.	Dearsley and Bell	1856-1858
Den.	Denison	1844-1852
Dick	Dickens	1559-1792
Dillon	Dillon's United States Circuit Court Reports.	
Doug.	Douglas	1778-1785
Dow	Dow	1812-1818
Dow & Cl.	Dow and Clark	1827-1831
Dowl.	Dowling, Practice Cases	1830-1841
Dowl. N.S.	Dowling, Practice Cases, New Series	1841-1843
Dowl. & L.	Dowling and Lowndes	1843-1849
Dr. & Sm.	Drewry and Smale	1859-1865
Dr. & Wal.	Drury and Walsh	1837-1841
Dr. & War.	Drury and Warren	1841-1843
Drew.	Drewry	1852-1859
Dru.	Drury, temp. Sugden	1843-1844
Durnford & East	See T.R.	
Dwar.	Dwarris on Statutes.	
Dyer. or Dy.	Dyer	1513-1582

E

E.B. & E.	Ellis, Blackburn and Ellis	1858
E. & B.	Ellis and Blackburn	1852-1858
E.C.R.	European Court Reports	1975-
E. & E.	Ellis and Ellis	1858-1861
E.G.	Estates Gazette.	
E.H.R.R.	European Human Rights Reports	1979-
East	East	1800-1812
East P.C.	East's Pleas of the Crown.	
Eden	Eden	1757-1766
Elph.	Elphinstone, Norton and Clark on the Interpretation of Deeds.	
Encyc.	Encyclopaedia of the Laws of England.	
Eq. Cas. Ab.	Equity Cases Abridged	1677-1744
Eq. Rep.	Equity Reports	1853-1855
Esp.	Espinasse	1793-1810
Ex.	Exchequer Reports	1847-1856
Ex. C.R. (preceded by date)	Canada Law Reports, Exchequer	1923-
Ex. D.	Law Reports, Exchequer Division	1875-1880

F

F.L.R.	Federal Law Reports (Australia)	1960-
F.L.R.	Family Law Reports	1980-
F.N.B.	Fitz-Herbert, Natura Brevium.	
F.S.R.	Fleet Street Reports of Patent Cases	1963-
F. & F.	Foster and Finlason	1856-1867
Fam. (preceded by date)	Law Reports, Family Division	1972-
Fam. Law	Family Law	1970-
Farwell	Farwell on Powers.	
Fawcett	Fawcett on Landlord and Tenant.	

Fearne Cont. Rem. ...	Fearne on Contingent Remainders and Devises.	
Fed. Rep.	Federal Reporter.	
Finch	Finch, Heneage	1673-1680
Fisher	Fisher on Mortgages.	
Florida	Florida Reports.	
Fon. B.C.	Fonblanque, Bankruptcy Cases	1849-1852
Forrest	Forrest's Exchequer Reports	1800-1801
Fort.	Fortescue	1695-1738
Foster	Foster's Crown Law Cases	1708-1760
Fox & Smith	Fox and Smith	1822-1824
Fox Pat. C.	Fox's Patent Cases (Canada)	1940-
Fry	Fry on Specific Performance of Contracts.	

G

G. & D.	Gale & Davison	1841-1843
Gale	Gale on Easements.	
Gallison	Gallison's United States Circuit Court Reports.	
Georgie	Georgie Reports.	
Giff.	Giffard	1857-1865
Gilb. Eq. Rep.	Gilbert's Equity Reports	1706-1727
Godb.	Godbolt	1575-1642
Goddard	Goddard on Easements.	
Godefroi	Godefroi on Trusts and Trustees.	
Goodeve	Goodeve on Real Property.	
Gould.	Gouldsbrough	1586-1602
Gow	Gow	1818-1820
Gray	Gray's Massachusetts Reports.	

H

H. Bl.	Henry Blackstone	1788-1796
H.L.	House of Lords.	
H.L. Cas.	House of Lords Cases	1847-1866
H.L.R.	Housing Law Reports	1982-
H. & C.	Hurlstone and Coltman	1862-1866
H. & M.	Hemming and Miller	1862-1865
H. & N.	Hurlstone and Norman	1856-1862
H. & P.	Hopwood and Philbrick	1863-1867
H. & R.	Harrison and Rutherford	1865-1866
H. & Tw.	Hall and Twells	1849-1850
Hagg. Adm.	Haggard, Admiralty Cases	1822-1838
Hagg. Con.	Haggard, Consistory Cases	1789-1802
Hagg. Ecc.	Haggard, Ecclesiastical Cases	1827-1833
Hale P.C.	Hale's Pleas of the Crown.	
Hamilton	Hamilton on Company Law.	
Hard.	Hardres	1655-1660
Hare	Hare	1841-1853
Hawk.	Hawkins on the Construction of Wills.	
Hawk. P.C.	Hawkins' Pleas of the Crown.	
Hayes	Hayes	1830-1832
Hetley	Hetley	1627-1631
Hill	Hill's New York Reports.	
Hob.	Hobart	1603-1625
Hodges	Hodges	1835-1837
Hogan	Hogan	1816-1834
Holt	Holt	1688-1710
Holt N.P.	Holt, Nisi Prius Cases	1815-1817
Hop. & Colt.	Hopwood and Coltman	1868-1878
Hud. & Bro.	Hudson and Brooke	1827-1831
Hudson	Hudson on Building Contracts.	
Hump.	Humphrey's Tennessee Reports.	

I

I.C.R.	Industrial Case Reports	1972-
I.L.R.	Insurance Law Reporter	1933-
I.L.T.R.	Irish Law Times Reports	1967-

I.R. (preceded by date)	Irish Reports	1893—
I.R.L.R.	Industrial Relations Law Reports	1972—
I.T.R.	Industrial Tribunal Reports.	
Ibid., ib.	Same case.	
Ill.	Illinois Reports.	
Imm.A.R.	Immigration Appeal Reports	1970—
Inst.	Coke's Institutes.	
Iowa	Iowa Reports.	
Ir.	Ireland.	
Ir. Ch. R.	Irish Chancery Reports	1850—1866
I.C.L.R.	Irish Common Law Reports	1850—1866
Ir. Eq. R.	Irish Equity Reports	1838—1850
Ir. Jur. Rep.	Irish Jurist Reports	1935—
Ir.L.R.	Irish Law Reports	1838—1850
Ir.R. (preceded by date)	Irish Reports	1893—
Ir. Rep. C.L.	Irish Reports, Common Law	1867—1877
Ir. Rep. Eq.	Irish Reports, Equity	1867—1877

J

J.C.	Justiciary Cases (Scotland)	1916—
J. and JJ.	Justice, Justices.	
J.P.	Justice of the Peace	1837—
J.P.J.	Justice of the Peace Journal	1837—
J.P.L. of J.P.P.L.	Journal of Planning and Property Law	1948—
J. & H.	Johnson and Hemming	1859—1862
J. & La. T.	Jones and La Touche	1844—1846
Jac.	Jacob	1821—1822
Jac. & W.	Jacob and Walker	1819—1821
Jacob	Jacob's Law Dictionary "enlarged and improved" by Tomlins and brought by him "to the end of the reign of our late venerated Sovereign George the Third," 3rd. quarto ed. Sometimes this book is cited as Tomlins, or Tomlins Law Dict.	
Jarm.	Jarman on Wills.	
Jebb & B.	Jebb and Bourke	1841—1842
Jebb & Sy.	Jebb and Symes	1838—1841
Jo. T.	Jones, T.	1667—1684
Jo. W.	Jones, William	1620—1640
Johns. N.Y.	Johnson's New York Reports.	
Johns.	Johnson	1858—1860
Johns. Cas.	Johnson's New York Cases.	
Johnson	Johnson's Maryland Reports.	
Jones & Carey	Jones and Carey	1838—1839
Jur.	Jurist	1837—1854
Jur. N.S.	Jurist, New Series	1854—1866
Juta	Juta's Cape Colony Reports.	

K

K.B. (preceded by date)	Law Reports, King's Bench, see now Q.B.	1901—1952
K.I.L.R.	Knights Industrial Law Reports	1975—
K.I.R.	Knight's Industrial Reports	1967—1974
K. & J.	Kay & Johnson	1854—1958
Kay	Kay	1853—1854
Keble	Keble	1661—1679
Keen	Keen	1836—1838
Keilwey	Keilwey, ed. of 1688	1496—1578
Kelynge W.	Kelynge, William	1730—1734
Keyes	Keye's New York Court of Appeal Reports.	
Kiralfy	Kiralfy's Action on the Case.	
Knapp P.C.	Knapp's Privy Council Cases	1829—1836

L

L.C. or C.	Lord Chancellor.
L.C.J. or C.J.	Lord Chief Justice.

L.G.R.	Local Government Reports	1902-
L.G.R.A.	Local Government Reports of Australia	1956-
L.J.	Law Journal Newspaper	1866-1965
L.J. or L.JJ.	Lord Justice, Lords Justices.	
L.J. Adm.	Law Journal, New Series, Admiralty	1866-1875
L.J. Bank	" " Bankruptcy	1832-1880
L.J.C.P.	" " Common Pleas (in and from 1876-1880, Common Pleas Division)	1831-1880
L.J. Ch.	Law Journal, New Series, Chancery	1831-1946
L.J. Ecc.	" " Ecclesiastical	1865-1875
L.J. Ex.	" " Exchequer (in and from 1876-1880, Exchequer Division)	1831-1880
L.J.K.B., or Q.B.	Law Journal, New Series, King's, or Queen's, Bench (in and from 1876, Queen's, or King's, Bench Div- ision)	1831-1946
L.J.M.C.	Law Journal, New Series, Magistrates' Cases	1831-1896
L.J.N.C.	Law Journal Notes of Cases	1866-1892
L.J.N.C.C.R.	Law Journal Newspaper County Court Reports	1934-1947
L.J.O.S.C.P.	Law Journal, Old Series, Common Pleas	1822-1831
L.J.O.S. Ch.	" " Chancery	1822-1823
L.J.O.S. Ex.	" " Exchequer	1830-1831
L.J.O.S. K.B.	" " King's Bench	1822-1831
L.J.O.S. M.C.	" " Magistrates' Cases	1826-1831
L.J.P.C.	" New Series, Privy Council	1865-1946
L.J.P.D. & A.	" " Probate, Divorce and Admiralty	1876-1946
L.J.P. & M.	" " Probate, and Matrimonial .	{ 1858-1859 1986-1875
L.J.P.M. & A.	Law Journal, New Series, Probate, Matrimonial and Admiralty	
L.J.R. (preceded by date)	Law Journal Reports	1947-1949
L.M. & P.	Lowndes, Maxwell and Pollock	1850-1851
L.Q.R.	Law Quarterly Review	1885-
L.R.A. & E.	Law Reports, Admiralty and Ecclesiastical	1865-1875
L.R.C.C.R.	" Crown Cases Reserved	1865-1875
L.R.C.P.	" Common Pleas	1865-1875
L.R. Eq.	" Equity	1865-1875
L.R. Ex.	" Exchequer	1865-1875
L.R.H.L.	" House of Lords, English and Irish Appeals	1866-1875
L.R. Ind. App.	" Indian Appeals	1873-
L.R. Ir.	" Ireland	1878-1893
L.R.P.C.	" Privy Council	1865-1875
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L.R. Sc. & D. App. ..	" Scottish and Divorce Appeals	1866-1875
	See also App. Cas.; Ch. D.; Ch.; C.P.D.; Ex. D.; P.D.; Q.B.D.	
L.T.	Law Times Reports, New Series	1859-1947
L.T.J.	Law Times Journal	1843-1965
L.T.O.S.	Law Times Reports, Old Series	1843-1859
L. & C.	Leigh and Cave	1861-1865
L. & G. t. Plunk.	Lloyd and Goold, temp. Plunkett	1833-1839
L. & G. t. Sug.	Lloyd and Goold, temp. Sugden	1835
Latch	Latch	1624-1627
Lea	Lea's Tennessee Reports.	
Leach	Leach, Crown Cases	1730-1814
Leake	Leake on Contracts.	
Lee Ecc.	Lee, Ecclesiastical Cases	1752-1758
Leon.	Leonard	1540-1615
Lev.	Levinz	1660-1697
Lewin	Lewin on Trusts.	
Lewin C.C.	Lewin, Crown Cases	1822-1833
Lindley Comp.	Lindley on Companies.	
Lindley P.	Lindley on Partnership.	
Litt.	Littleton's Tenures, the version used being that in the edition of Co. Litt. here used.	

Litt. Rep.	Littleton	1626-1632
Ll. L. Rep.	Lloyd's List Reports	1919-1950
Ll. P.C.	Lloyd's Prize Cases	1940-
Lloyd's Rep. (pre- ceded by date)	Lloyd's List Reports	1951-
Lofft	Lofft	1772-1774
Long. & Town.	Longfield and Townsend	1841-1842
Lowndes & Maxwell .	See Bail C.C.	
Lush.	Lushington	1859-1862
Lutw.	Lutwyche, Registration Cases	1843-1853
Lutw. E.	Lutwyche, Edward	1683-1704

M

M.P.R.	Maritime Provinces Reports	1930-
M.R.	Master of the Rolls.	
M. & G.	Manning and Granger	1840-1844
M. & R.	Manning and Ryland	1827-1830
M. & S.	Maude and Selwyn	1813-1817
M. & W.	Meeson & Welsby	1836-1847
McL.	McLean's United States Circuit Court Reports.	
Mac. & G.	Macnaughten and Gordon	1849-1852
Macq.	Macqueen, Scottish Appeals	1851-1865
MacS.	MacSweeney on Mines, Quarries and Minerals.	
Mad.	Maddock	1815-1822
Maine	Maine Reports.	
Manson	Manson's Bankruptcy and Winding-up Cases	1894-1914
Manwood	Manwood's Forest Laws.	
Mar. Cas.	Maritime Cases by Crockford and Cox	1860-1871
Marsh.	Marshall	1813-1816
Mass.	Massachusetts Reports.	
Maude & P.	Maude and Pollock on Merchant Shipping.	
Maxwell	Maxwell on the Interpretation of Statutes.	
M'Cle.	M'Clelland	1824
M'Cle. & Y.	M'Clelland and Younge	1824-1825
Megarry	Megarry, The Rent Acts.	
Minn.	Minnesota Reports.	
Miss.	Mississippi Reports.	
Mo.	Missouri Reports.	
Mod.	Modern	1669-1732
Mod. L.R.	Modern Law Review	1937-
Moll.	Molloy	1827-1828
Mont.	Montagu	1829-1832
Mont. & Ayr.	Montagu and Ayrton	1833-1838
Mont. & B.	Montagu and Bligh	1832-1833
Mont. & Chitt.	Montagu and Chitty	1838-1840
Mont. D. & D.	Montagu, Deacon and De Gex	1840-1841
Mont. & M'A.	Montague and Macarthur	1826-1830
Moo. & M.	Moody and Malkin	1826-1830
Moo. & R.	Moody and Robinson	1830-1844
Moody	Moody's Crown Cases	1824-1844
Moore	Moore, Francis	1512-1621
Moore C.P.	Moore, J. B., Common Pleas and Exchequer Chamber Cases	1817-1827
Moore Ind. App.	Moore, Indian Appeals	1836-1872
Moore P.C.	Moore, Privy Council Appeals	1836-1862
Moore P.C.N.S.	Moore, Privy Council Appeals, New Series	1862-1873
Moore & P.	Moore and Payne	1827-1831
Moore & S.	Moore and Scott	1831-1834
Morr.	Morrell, Bankruptcy Cases	1884-1893
Moseley	Moseley	1726-1730
My. & C.	Mylne and Craig	1835-1841
My. & K.	Mylne and Keen	1832-1835

N

n.	Note.	
N. Hamp.	New Hampshire Reports.	
N.I. (preceded by date)	Northern Ireland; Northern Ireland Reports	1925-

N.I.L.R.	Northern Ireland Law Reports	1925–
N.R.	New Reports	1862–1865
N.S.W.R.	New South Wales Reports	1901–
N.Y.	New York Reports.	
N.Z.L.R.	New Zealand Law Reports	1883–
N. & M.	Neville and Manning	1832–1836
N. & P.	Neville and Perry	1836–1838
N. & P.E.I.R.	Newfoundland and Prince Edward Island Reports	1970–
Newb.	Newberry's United States Admiralty Reports.	
Nolan	Nolan on the Poor Laws.	
Noy	Noy	1559–1649

O

O.	Order.	
O.L.R.	Ontario Law Reports	1901–1930
O.R.	Ontario Reports	1823–1900
O.R. (preceded by date)	Ontario Reports	1931–
O'M. & H.	O'Malley and Hardcastle	1869–1934
Odgers	Odgers on Libel and Slander.	
Ohio	Ohio Reports.	
Ohio St.	Ohio State Reports.	
Ord.	Order.	
Orl. Bridg.	Orlando Bridgman	1660–1667
Owen	Owen	1556–1615

P

P. (preceded by date)	Law Reports, Probate Admiralty and Divorce	1890–
P.C.	Privy Council.	
P.D.	Law Reports, Probate Divorce and Admiralty Division (Note. In and since 1891 these reports are cited by the year, e.g. [1891] P.)	1875–1890
P. Wms.	Peere Williams	1695–1735
P. & C.R.	Property (previously Planning) and Compensation Reports	1950–
P. & D.	Perry and Davison	1838–1841
Palm.	Palmer	1619–1621
Palmer Co. Pre.	Palmer's Company Precedents.	
para.	Paragraph.	
Park	Park on Marine Insurance.	
Parker	Parker	1743–1767
Pat. Cas. (see R.P.C.)	Patent Cases, by Cutler	1884–
Paterson	Paterson's Scottish Appeals	1851–1873
Peake	Peake	1790–1812
Peake Add. Cas.	Peake, Additional Cases	1795–1812
Penn St.	Pennsylvania State Reports.	
Phil. Ecc.	Phillimore	1809–1821
Phil. Ecc. Law	Phillimore's Ecclesiastical Law.	
Phill.	Phillips	1841–1849
Pickering	Pickering's Massachusetts Reports.	
Platt	Platt on Leases.	
Platt Cov.	Platt on Covenants.	
Plowd.	Plowden	1550–1580
Poll.	Pollexfen	1660–1685
Pop.	Popham	1592–1627
Pr. Ch.	Precedents in Chancery, Finch	1689–1722
Price	Price	1814–1824

Q

Q B.	Queen's Bench Reports	1841–1852
Q.B. (preceded by date)	Law Reports, Queen's Bench	1891–1901
Q.B.D.	Law Reports, Queen's Bench Division	1952–
Q.C.L.L.R.	Queensland Crown Lands Law Reports	1875–1890
Q.J.P.R.	Queensland Justice of the Peace Reports	1859–
		1907

Q.L.R.	Queensland Law Reporter	1902-1972
Q.S.	Quarter Sessions.	
Q.S.R.	Queensland State Reports	1902-1957
Q.W.N.	Queensland Weekly Notes	1908-
Qd. R.	Queensland Reports	1958-
Que. C.A. (preceded by date)	Quebec Official Reports, Court of Appeal	1970-
Que. S.C. (preceded by date)	Quebec Official Reports, Superior Court	1892

R

R., r.	Rule.	
R.A.	Rating Appeals	1963-
R.P.C.	Reports of Patent, Design, and Trade Mark Cases	1884-
R.R.C.	Ryde's Rating Cases	1956-1976
R.S.A.	Revised Statutes of Alberta.	
R.S.C.	Rules of the Supreme Court.	
R.S.C.	Revised Statutes of Canada.	
R.S.N.S.	Revised Statutes of Nova Scotia.	
R.S.O.	Revised Statutes of Ontario.	
R.S.P.E.I.	Revised Statutes of Prince Edward Island.	
R.S.S.	Revised Statutes of Saskatchewan.	
R.T.R.	Road Traffic Reports	1970-
R.V.R.	Rating and Valuation Reporter	1961-
R. & I.T.	Rating and Income Tax	1924-
Raym. Ld.	Lord Raymond	1694-1732
Raym. T.	T. Raymond	1660-1684
Redman	Redman on Landlord and Tenant.	
Reed	Reed on Bills of Sale.	
reg.	Regulation.	
Rep.	Coke's Reports	1572-1617
Rettie	The same as Session Cases, Scottish, 4th series	1873-1898
Rice	Rice's South Carolina Reports.	
Rob. C.	Robinson, Christopher	1798-1808
Rob. Ecc.	Robertson, Ecclesiastical Cases	1844-1853
Rob. W.	Robinson, William	1838-1850
Robson	Robson on Bankruptcy.	
Robt. N.Y.	Robertson's New York Superior Court Reports.	
Rogers	Rogers on Elections.	
Rol. Ab.	Rolle's Abridgment.	
Rolle	Rolle	1614-1625
Rop.	Roper on Legacies.	
Rosc. Cr.	Roscoe's Digest of the Law of Evidence in Criminal Cases.	
Rosc. N.P.	Roscoe's Digest of the Law of Evidence <i>Nisi Prius</i> .	
Rose	Rose	1810-1816
Russ.	Russell	1823-1829
Russ. Cr.	Russell on Crimes and Misdemeanours.	
Russ. & My.	Russell and Mylne	1829-1833
Russ. & Ry.	Russell and Ryan	1800-1823
Ry. Cas.	Railway and Canal Cases	1835-1854
Ry. & Can. Traffic Cases	Railway and Canal Traffic Cases: cp. B. & Macn. (see Traffic Cas.)	1855-1950
Ry. & Moo.	Ryan and Moody	1823-1826

S

s.	Section (of Act of Parliament).	
S. or Scot.	Scotland.	
S.A.I.R.	South Australian Industrial Reports	1912-
S.A.L.R.	South African Law Reports	1947-
S.A.S.R.	South Australian State Reports	1921-
S.C.	Session Cases (New Series)	1906-
S.C. (J.)	Session Cases (High Court of Justiciary)	1873-1916
S.C. (H.L.)	Session Cases (House of Lords)	1852-
S.C.R.	Canada Law Reports (Supreme Court)	1923-
S.I.	Statutory Instruments.	
S.J.	Solicitors' Journal	1856-
S.L.C.R.	Scottish Land Court Reports	1913-

S.L.R.	Scottish Law Reporter	1865-1924
S.L.T.	Scots Law Times	1893-
S.R. & O.	Statutory Rules and Orders.	
S.R. (N.S.W.)	State Reports (New South Wales)	1901-
S.T.C.	Simon's Tax Cases	1973-
Salk.	Salkeld	1689-1712
Saund.	Saunders (see Wms. Saund.)	1666-1672
Savile	Savile	1580-1594
Sayer	Sayer	1751-1756
Sc.	Scott	1834-1840
Sc. L.R.	Scottish Law Reporter	1865-1924
Sc. N.R.	Scott, New Reports	1840-1845
Sch., Sched.	Schedule.	
Sch. & Lef.	Schoales and Lefroy	1802-1807
Sched.	Schedule.	
Scriven	Scriven, Law of Copyholds.	
Scrutton	Scrutton on Charter-parties and Bills of Lading.	
Selwyn N.P.	Selwyn's <i>Nisi Prius</i> .	
Sess. Cas. 4th Ser.	Sessions Cases, Scottish, 4th Series	1874-1898
Seton	Seton on Decrees.	
Sh. Ct. Rep.	Sheriff Court Reports (S.)	1885-
Show.	Shower	1678-1694
Sid.	Siderfin	1657-1670
Sim.	Simons	1826-1852
Sim. N.S.	Simons, New Series	1850-1852
Sim. & St.	Simons & Stuart	1822-1826
Skinner	Skinner	1681-1697
Sm. & G.	Smale & Giffard	1852-1858
Sm. L.C.	Smith's Leading Cases.	
Smythe	Smythe	1839-1840
Sneed	Sneed's Tennessee Reports.	
Spelm.	Spelman's Glossarium Archaiologicum.	
Spinks	Spinks, Ecclesiastical and Admiralty	1853-1855
Staf. Def.	Statutory definition, or definitions.	
Starkie	Starkie	1815-1823
Steph. Cr.	Stephen's Digest of the Criminal Law.	
Stone	Stone's Justices' Manual.	
Story	Story on Equitable Jurisprudence.	
St. R. Qd.	Queensland State Reports	1902-
Stra.	Strange	1715-1748
Sty. or Style	Style	1646-1655
Sug. Pow.	Sugden on Powers.	
Sug. Prop.	Sugden on the Law of Property as administered by the House of Lords.	
Sug. V. & P.	Sugden on Vendors and Purchasers.	
Sumner	Sumner's United States Circuit Court Reports.	
Sup. Ct. Pr.	Supreme Court Practice.	
Sutton	Sutton on Personal Actions at Common Law.	
Sw. & Tr.	Swabey and Tristram	1858-1865
Swabey	Swabey	1855-1859
Swanst.	Swanston	1818-1819

T

T.C.	Tax Cases	1875-
T.C. Leaflet	Tax Cases Leaflets	1938-
T.L.R.	Times Law Reports	1884-1950
T.L.R. (preceded by date)	Times Law Reports	1951-
T.R.	Term Reports, same as Durnford and East	1785-1800
T.R.	Taxation Reports	1939-
T. & M.	Temple and Mews, Criminal Cases	1848-1851
T. & R.	Turner and Russell	1822-1825
Tas. S.R.	Tasmanian State Reports	1941-
Taunt.	Taunton	1807-1819
Tax Cas.	Tax Cases	1875-
Termes de la Ley	Termes de la Ley—the edition used being that pub- lished in London and “printed by Jo. Beale & Ric. Hearne for the benefit of all that are studious in the	

Common Laws of this Realme, 1641”; “a book of great antiquity and accuracy” (*per* Bayley J., 5 B. & C. 229). If the word is not found in the edition mentioned, then refer to that of 1721.

Texas	Texas Reports.	
Theobald	Theobald on Wills.	
Tomlins	See Jacob.	
Touch	The Touch-Stone, commonly cited as Shep. Touch.	
Tr.L.	Trading Law.	
Traff. Cas.	Railway, Canal and Road Traffic Cases	1855–1950
Tudor Char. Trusts ...	Tudor on Charitable Trusts.	
Tudor’s L.C.M.L.	Tudor’s Leading Cases on Mercantile Law.	
Tudor’s L.C.R.P.	Tudor’s Leading Cases in Real Property.	
Tyr.	Tyrwhitt	1830–1835
Tyr. & G.	Tyrwhitt and Granger	1835–1836

U

U.S.	United States Supreme Court Reports.
U.S. Dig.	United States Digest.

V

v.	Versus.	
V.A.T.T.R.	Value Added Tax Tribunal Reports	1973–
V.L.R.	Victorian Law Reports	1875–1956
V.R.	Victorian Reports	1957–
V. & B.	Versey and Beames	1812–1814
Vaizey	Vaizey on Settlements.	
Vaugh.	Vaughan	1665–1674
Ventr.	Ventris	1668–1684
Vern.	Vernon	1681–1719
Vern. & S.	Vernon and Scriven	1786–1788
Ves.	Vesey, junior	1754–1817
Ves. sen.	Vesey, senior	1746–1755
Vin. Ab.	Viner’s Abridgment.	

W

W.A.L.R.	West Australian Law Reports	1898–1959
W.A.R.	Wester Australian Reports	1960–
W. Bl.	William Blackstone	1746–1780
W.C.R.	Workers Compensation Reports, New South Wales ...	1926–
W.I.R.	West Indian Reports.	
W.L.R. (preceded by date)	Weekly Law Reports	1953–
W.N. (preceded by date)	Law Reports, Weekly Notes	1866–1952
W.N. (N.S.W.)	Weekly Notes (New South Wales)	1884–
W.R.	Weekly Reporter	1852–1906
W.W.R.	Western Weekly Reports	1912–
W. & D.	Wolferstan and Dew’s Election Cases	1856–1858
Wallace, or Wall.	Wallace’s United States Supreme Court Reports.	
Watson Eq.	Watson’s Practical Compendium of Equity.	
Webster	Webster, Patent Cases	1601–1855
Wend.	Wendell’s New York Reports.	
Wheaton	Wheaton’s United States Supreme Court Reports.	
White and Tudor	White & Tudor’s Leading Cases in Equity.	
Wight.	Wightwick	1810–1811
Wilberforce	Wilberforce on Statute Law.	
Willes	Willes	1737–1758
Wils. Ch.	Wilson’s Chancery Reports	1818–1819
Wils. Ex.	Wilson’s Exchequer Reports	1805–1817
Wils. K.B.	Wilson’s King’s Bench Reports	1742–1774
Wilson & Shaw	Wilson and Shaw’s Scottish Appeals	1825–1834
Winch	Winch	1621–1625
Wis.	Wisconsin Reports.	
Wms. Bank.	Williams on Bankruptcy.	
Wms. Exs.	Williams on Executors and Administrators.	

Wms. P.P.	Williams on Personal Property.	
Wms. R.P.	Williams on Real Property.	
Wms. Saund.	Saunders' Reports, with notes by Williams	1666-1672
Wms. & Bruce	Williams and Bruce's Admiralty Practice.	
Wood	Wood on Mercantile Agreements.	
Wood	Wood, Tithe Cases	1650-1798
Woodf.	Woodfall on Landlord and Tenant.	

Y

Y.B.	Year Books of Reports of Cases	1307-1537
Y. & C. Ch.	Younge and Collier, Chancery Cases	1841-1843
Y. & C. Ex.	Younge and Collier, Exchequer Cases	1834-1842
Y. & J.	Younge and Jervis	1826-1830
Yate Lee	Yate Lee, on Bankruptcy.	
Yelv.	Yelverton	1602-1613
Younge	Younge	1830-1832

S

SACRAMENT. "The word *sacramentum* signified, in its general meaning, an oath. The later fathers of the Church applied the term to designate a holy mystery. The English Church expresses most clearly the Catholic doctrine defining a sacrament to be 'an outward and visible sign of an inward spiritual grace given unto us, ordained by Christ Himself, as a means whereby we receive the same, and a pledge to assure us thereof' " (Phil. Ecc. Law, 483).

See CHURCH; RITE.

SACRIFICE. "Sacrifice" has been applied to the Lord's Supper by divines of eminence, not in the sense of a true propitiatory or atoning sacrifice effectual as a satisfaction for sin, but in the sense of a rite which calls to remembrance and represents before God the one true sacrifice (*Sheppard v. Bennett* L.R. 4 P.C. 371). But in the 39 Articles "sacrifice" means the atoning sacrifice (*Voysey v. Noble* 40 L.J. Ecc. 22). See REAL PRESENCE.

See GENERAL AVERAGE SACRIFICE.

SACRILEGE. Sacrilege was the "felonious taking of any goods out of a parish church, or other church or chapel" (s.10, Repeal of Statutes as to Treason, etc., Act 1547 (1 Edw. 6, c. 12); 2 Hale P.C. 365); and such goods were not confined to things used for divine service—the felonious taking of anything out of, or belonging to (*Benson v. Morley* Cro. Jac. 153, cited ROB) a church or chapel, which taking was a "violation of the sanctity of the place," was sacrilege (*R. v. Catherine Rourke* Russ. & Ry. 386); in this last case the woman was convicted at Kingston Lent Assizes, 1819, of stealing an iron pot (value 6d.) used for burning charcoal to air the vaults of the church, and a snatch-book (value 4s.) for raising weights when the bells wanted repairing; and the judges (Easter Term, 1819) were unanimously of opinion "that a capital sentence ought to be passed on the prisoner."

SACRISTAN. See SEXTON.

SADDLE. See BELONGING.

SAFE. (1) "Safe and practicable" for navigation: see *The Oporto* [1897] P. 249.

(2) As to the usual phrase in a marine insurance, "until she hath moored at anchor 24 hours in good safety," see *Lidgett v. Secretan* L.R. 5 C.P. 190, and the authorities there cited and discussed. See also *Cornfoot v. Royal Exchange Assurance* [1904] 1 K.B. 40, cited DAYS.

(3) For discussions of the meaning of "safe berth or loading place" and "safe anchorage" as used in charterparties, see *Compania Naviera Maropan v. Bowaters Lloyd Pulp and Paper Mills Ltd.* [1955] 2 Q.B. 68, in which it was held that "safe" in this context means that the place must be safe for the particular ship chartered at or about the time when she is to use it. See also *Reardon Smith Line Ltd. v. Australian Wheat Board* [1956] A.C. 266. See SAFE PORT.

(4) As to a warranty of a ship's "safety," or being "well," on a stated day, see *Blackhurst v. Cockell* 3 T.R. 360. "It is sufficient to be safe at any time during that day" (Marine Insurance Act 1906 (c. 41), s.88).

(5) In relation to a safe system of working, the term "system" includes or may include such matters as physical lay-out of the job, the sequence in which work is carried out, the provision, in proper cases, of warnings and notices, and the issue of special instructions (*Speed v. Thomas Swift & Co.* [1943] K.B. 557). See also *Hopwood v. Rolls-Royce* 176 L.T. 514 (burden of proof); *Spencer v. Green & Silly, Weir* 80 L.L. Rep. 217; *Swift v. Reardon Smith Line* [1851] 1 Lloyd's Rep. 1; *Hutchinson v. London County Council* [1951] 2 Lloyd's Rep. 401; *Bott v. Prothero Steel Tube Co.* [1951] W.N. 595; *Holt v. W. H. Rhodes & Son* [1949] 1 All E.R. 478 (casual act interfering with system); *Winter v. Cardiff Rural District Council* [1950] 1 All E.R. 819 (fellow employee's negligence); *Clifford v. Charles H. Challen & Son* [1951] 1 K.B. 495 (protection against occupation disease); *Paris v. Stepney Borough Council* [1951] A.C. 367 (protection of one-eyed man); *Dyer v. Southern Railway* [1948] 1 K.B. 608 (railwayman working on line); *Barcock v. Brighton Corporation* [1949] 1 K.B. 339 (lack of tuition of employee).

(6) "Safe" (Factories Act, 1937 (c. 67), s.14; Factories Act 1961 (c. 34), s.14) means actually safe, and this actual safety is to be procured by (a) secure fencing, or (b) by safe position, or (c) by safe construction (*Sowter v. Steel Barrel Co.* 154 L.T. 85).

(7)(a) "Safe means of access" (Factories Act 1937 (c. 67), s.26(1) Factories Act 1961 (c. 34), s.29). There must be a safe means of access to the particular branch of the man's work on which at the moment he is about to engage himself (*Hopwood v. Rolls Royce* 176 L.T. 514). Whilst a place may be a place of work and a means of access, it is necessary to decide what its use is at the material time (*Dorman Long & Co. v. Hillier* [1951] 1 All E.R. 357). "Safe" means safe for all contingencies that may reasonably be foreseen, unlikely as well as likely, possible as well as probable (*McCarthy v. Coldair* [1951] 2 T.L.R. 1226). The duty imposed by the section cannot be met by saying: "Well, it was not very convenient" (*Street v. British Electricity Authority* [1952] 2 Q.B. 399). See also *Hosking v. De Havilland Aircraft Co.* [1949] 1 All E.R. 540; *Callaghan v. Kidd & Son* [1944] K.B. 500; *Donovan v. Cammell, Laird & Co.* [1949] 2 All E.R. 82; *Farquhar v. Chance Bros.* 115 J.P. 469; *Key v. Commissioner for Railways* [1941] N.S.W.S.R. 60.

(b) Safe means of access (Building (Safety Health and Welfare) Regulations 1948 (No. 1145), ref. 5). In deciding whether a means of access is safe it must not be assumed that everyone will always be careful (*Sheppey v. Matthew T. Shaw & Co* [1952] 1 T.L.R. 1272). "A means of access is not 'safe' within reg. 5 if it is a possible cause of injury to anybody acting in a way that a human being may be reasonably expected to act in circumstances which may reasonably be expected to occur" (per Parker L.J. in *Trott v. Smith (W.E.) (Erectors)* [1957] 1 W.L.R. 1154).

(c) "Safe means of access" (Construction (General Provisions) Regulations 1961 (No. 1580), ref. 7 (1)). An access is not "safe" if there is a danger to those using it even if the danger can be avoided by the exercise of reasonable care (*Frith v. Edmund Nuttall Sons & Co.* 1966 S.L.T. (Sh. Ct.) 97).

(d) "Safe means of access" (Shipbuilding Regulations 1931 (No. 133), ref. 1). The fact that a workman's route to his place of work lay over part of the dock and not over a part of the ship did not deprive him of his right of safe means of access under this regulation (*Hurley v. Sanders (J.) & Co.* [1955] 1 W.L.R. 470).

(8) "Safe for any person working there" (Factories Act 1961 (c. 34), s.29(1)). A man's place of work can be considered "safe" for the purposes of this section if no

cause of injury is reasonably foreseeable (*Hill v. Buchanan (J.O.) & Co.* 1965 S.L.T. (Notes) 24.).

(9) "Safe working of the ship" (Docks Regulations 1934 (No. 279), reg. 26). This might be "impeded" within the meaning of this regulation by putting more fencing round a winch than was customarily there (*Ritchie v. Irving T.G. & Co.* [1952] W.N. 550).

(10)(a) "Safely be done" (Building (Safety, Health and Welfare) Regulations 1948 (No. 1145), reg. 5). The test whether work can "safely be done" within this regulation, is whether, on all the facts known or which ought to be known, the doing of the work involved foreseeable risk (*Curran v. Neill (William) & Son (St. Helens)* [1961] 1 W.L.R. 1069).

(b) "Safely be done" (Construction (General Provisions) Regulations 1961 (No. 1580), reg. 7 (2)). A skilled steel erector can do his work "safely" within the meaning of this regulation while sitting astride a girder (*Woods v. Power Gas Corporation* (1969) 8 K.I.R. 834).

(11) "Safely and securely," in a declaration in bailment, meant "with due care" (*Ross v. Hill* 15 L.J.C.P. 182).

(12) Private branch railway "with safety to the public": see *Lancashire Brick Co. v. Lancashire & Yorkshire Railway* 71 L.J.K.B. 434, cited RAILWAY.

Stat. Def., Consumer Safety Act 1978 (c. 38), s.9. "Safely afloat," see SAFE PORT.

SAFELY; SAFETY. See SAFE.

See SAFE PORT; NEAR THERETO AS SHE MAY SAFELY GET; PLACE.

SAFE CUSTODY. "Safe custody" (s.76, Larceny Act 1861 (24 & 25 Vict., c. 96)): see *R. v. Cooper* L.R. 2 C.C.R. 123; *R. v. Fullagar* 41 L.T. 448; *R. v. Newman* 8 Q.B.D. 706.

See EXPRESSLY FOR SAFE CUSTODY.

SAFE LOADING PLACE. A place where a vessel can be rendered safe for loading by reasonable measures of precaution, is a "safe loading place" within the terms of a charterparty (*Smith v. Dart* 14 Q.B.D. 105).

SAFE PORT. (1) "It seems that a port into which a ship cannot enter when fully laden is not a 'safe port' " (1 Maude & P. (4th ed.) 320, n, citing *General Steam Navigation Co. v. Slipper* 31 L.J.C.P. 185; see further MANCHESTER: *Capper v. Wallace* 5 Q.B.D. 163); and that meaning cannot be widened by a local custom to lighten ships to enable them to go to the place named as a "safe port" (*Reynolds v. Tomlinson* [1896] 1 Q.B. 586, following *The Alhambra* 6 P.D. 68). And, "although the ship can physically get into it (as far as navigation and what may be called the natural incidents are concerned), yet if that would be at the certain risk of confiscation, then the place is not a 'safe port' " (*per Blackburn J., Ogden v. Graham* 31 L.J.Q.B. 29).

(2) "Safe port" in a charterparty means a port to which a vessel can get laden as she is and at which she can lay and discharge, always afloat (*Hall Bros. S.S. Co. v. Paul Ltd.* 30 T.L.R. 598). In considering whether a port is a safe port, dangers likely to be met with on the voyage may be taken into account (*Palace Shipping Co. v. Gans S.S. Co.* [1916] 1 K.B. 138). See also *G. W. Grace & Co. v. General Steam Navigation Co.* [1950] 2 K.B. 383, where charterers were liable for ordering a vessel to enter a port affected by ice. See also *Duncan v. Köster, The Teutonia* L.R. 4 C.P.

171; *Nobel Co. v. Jenkins* [1896] 2 Q.B. 326; cited RESTRAINTS OF KINGS; *Smith v. Dart* 14 Q.B.D. 105, cited SAFE LOADING PLACE; HARBOUR.

(3) “A port will not be safe unless, in the relevant period of time, the particular ship can reach it, use it, and return from it without, in the absence of some abnormal occurrence, being exposed to damage which cannot be avoided by good navigation and seamanship” (*per Sellers, L.J.* in *The Eastern City* [1958] 2 Lloyd’s Rep. 127).

(4) Where a charterparty provided that cargo should only be handled at ports where the vessel could “always lie safely afloat,” these words were concerned only with the marine characteristics of the ports (*Vardinoyannis v. Egyptian General Petroleum Corporation; The Evaggelos T.H.* [1971] 2 Lloyd’s Rep. 200). The port of Destrehan on the Mississippi River was held to be a safe port within the terms of a charterparty because, although there was a known possibility that a ship of the draught of the one in question might be delayed in departure by the varying depth of the river, the port was reachable at the time it was nominated (*Unitramp v. Garnac Grain Co., “The Hermine”* [1979] 1 Lloyd’s Rep. 212). Safe means safe *qua* port and there was no breach of warranty where a ship was delayed by the “abnormal occurrence” of a subsequent outbreak of local war in a port which was safe when nominated and at the time of the ship’s arrival (*Kodross Shipping Corp. of Monrovia v. Empress Cubana de Fletes, The Evia* [1983] A.C. 736). Where a port became unsafe after a proper order had been given to a vessel to proceed to that port at a time when it was still prospectively safe, the charterers were held to have breached the “safe port” clause in the charterparty because they failed to countermand the order when the port became unsafe before the vessel reached it (*Uni-Ocean Lines Pte. v. C-Trade SA, The Lucille* [1984] 1 Lloyd’s Rep. 244).

See NEAR THERETO AS SHE MAY SAFELY GET.

SAFETY-GLASS. This is laminated glass with interposed plastic (*Grenfell v. Meyrowitz* [1936] 2 All E.R. 1313).

SAID. (1) “Said,” or “the said,” has reference to the last antecedent (*Esdaile v. Maclean* 16 L.J. Ex. 71; see also *Wigmore v. Wigmore* [1872] W.N. 93), *e.g.* see *Hall v. Warren* 9 H.L. Ca. 420. But, on a context, an opposite conclusion was reached in *R. v. Countesthorpe* 2 B. & Ad. 487, and in *Healy v. Healy, Ir. Rep.* 9 Eq. 418. See also *Shepherd’s Trustees v. Shepherd* 1945 S.C. 60.

(2) “My said sisters”: as to the effect of this phrase in a will, see *Mackintosh (or Miller) v. Gerard* [1947] A.C. 461.

See AFORESAID; DEMISED. Cp. SUCH.

SAID DAUGHTERS. For the construction of the words “said five daughters” in a will, see *Re Harding* 92 L.J. Ch. 251.

SAID ESTATE. See *Markham v. Hutt* [1866] W.N. 17.

SAID TRUSTEES. “The power of appointment of new trustees is sometimes given ‘to the said trustees,’ and then the question arises whether a sole survivor can appoint. It is conceived that ‘the said trustees’ means the persons or person representing the trust for the time being under the settlement, and that the survivor can therefore exercise the power” (Lewin (15th ed.) 327). So, a power of sale to “my said trustees,” is exerciseable by the trustees for the time being (*Re Smith, Eastick v. Smith* [1904] 1 Ch. 139; also cited TRUSTEE).

SAIL. (1) "It is clear that a warranty to 'sail,' without the word 'from,' is not complied with by the vessel's raising her anchor, getting under sail, and moving onwards, unless at the time of the performance of these acts she has everything ready for the performance of the voyage, and such acts are done as the commencement of it, nothing remaining to be done afterwards" (*per* Abbott C.J., *Lang v. Anderdon* 3 L.J.O.S.K.B. 62; see on this case *Graham v. Barras* 5 B. & Ad. 1011).

(2) "'Sail' is a technical word, and means 'start on voyage' " (*per* Byles J., *Barker v. McAndrew* 34 L.J.C.P. 195; see hereon 1 Maude & P. (4th ed.) 500; *Thompson v. Gillespy* 24 L.J.Q.B. 340). "A vessel has sailed the moment she is unmoored and got under-way in complete preparation for the voyage, with the purpose of proceeding to sea without further delay at the port of departure. Lord Mansfield said, 'to constitute a sailing under this warranty, the vessel at the time of sailing must be, in the contemplation of the captain, at absolute and entire liberty to proceed to her port of delivery in a mathematical line if it were possible' (*Thellusson v. Staples* 1 Doug. 366, n.)—referring, probably, to her being ready so far as her preparations and equipments for the voyages are concerned" (Phillips on Insurance, s.772, cited and adopted by Mathew J., *Sea Insurance v. Blogg* [1898] 1 Q.B. 27; 2 *ibid.* 398; see further READY FOR SEA). Therefore, where a vessel, being fully equipped, left her moorings with the intention of proceeding to sea, she was held to have then sailed, although, owing to the wind, she stayed for two days about half a mile nearer the mouth of the harbour (*Cockrane v. Fisher* 4 L.J. Ex. 328); *secus*, where the movement from the mooring towards the mouth of the harbour was merely for the more convenient sailing at a later time (*Sea Insurance v. Blogg* sup.), or where the vessel starts, but, being under-manned, is compelled to put back" (*Sharp v. Gibbs* 1 H. & N. 801).

(3) An agreement "to sail," without more, means to sail at once, *i.e.* within a reasonable time "having regard to the weather and the possibility of moving the ship" (*per* Esher M.R., *Oriental S.S. Co. v. Tylor* [1893] 2 Q.B. 518).

(4) Cp. LEAVE; but "depart" and "despatch" are, *semble*, synonymous with "sail." "Now sailed, or about to sail": see NOW.

See further FINAL SAILING; VOYAGE.

SAIL WITH CONVOY. See CONVOY.

SAILING. See SAIL; FINAL SAILING.

SAILING VESSEL. Sailing vessel "under-way," or "at anchor": see *The Indian Chief* 14 P.D. 24, cited UNDER-WAY.

See VESSEL. Cp. STEAMSHIP.

SAILOR. See SEAMAN; MARINER.

ST. LEONARDS' (LORD) ACTS. Wills Act Amendment Act 1852 (c. 24).

Land Tax Redemption (No. 2) Act 1853 (c. 117).

Law of Property Amendment Acts 1859 and 1860 (c. 35), (c. 38).

Crown Debts and Judgments Act 1860 (c. 115).

Sale of Land by Auction Act 1867 (c. 48).

See further SUGDEN'S ACTS.

SAISIE CONSERVATOIRE. See *The Goulandris* 96 L.J.P. 85.

SAKE. "The priviledge called 'sake' is for a man to have the amerciaments of his tenants in his owne court" (Termes de la Ley).

Cp. SOKE.

SALARY. (1) "'Salarie' is a word often used in our bookes, and it signifies a recompence or consideration given unto any man for his paines bestowed upon another mans business" (Termes de la Ley, *Salarie*). See further Jacob.

(2) The earnings of a commercial traveller, whose employment was at so much a year terminable by a week's notice, were "salary" within s.53(2), Bankruptcy Act 1883 (c. 52) (*Ex p. Brindle* 56 L.T. 498). See Act of 1914 (c. 59), s.51(2). See further INCOME.

(3) Where a person is paid a weekly wage it is not permissible to multiply the weekly wage by fifty-two and call the result an annual salary (*Naylor v. Peacehaven Electric Light & Power Co.* 47 T.L.R. 535).

(4) "Wages or salary," as regards preferential payments in Bankruptcy Act, 1888 (c. 62), might be partly by fixed periodical payments and partly by commission (*Re Klein* 22 T.L.R. 664).

(5) "Salaries," as regards assessment to income tax under Sched. E of the Income Tax Acts (see now Income and Corporation Taxes Act 1970 (c. 10), s.183(1)), includes additional allowances under a provident fund scheme (*Smythe v. Stretton* 20 T.L.R. 443), and also a sum of money paid to a director, who had expressed an intention of resigning, in consideration of his agreeing not to cease to give his services as director (*Cameron v. Prendergast* [1940] A.C. 549).

(6) "Salary" (National Insurance (Classification) Regulations 1948 (No. 1425), Sched. 1, Part 1 (A), para. 2 (b)). A school dentist regularly working six three-hour sessions per week at a fixed rate per session is "remunerated by salary" (*Greater London Council v. Minister of Social Security* [1971] 1 W.L.R. 641).

(7) "Salaried partner" is not a term of art, and whether such a partner is a partner in the true sense depends on the substance of the relationship and the facts of the particular case (*Stekef v. Ellice* [1973] 1 W.L.R. 191).

(8) "Salary," in ss.2 and 5, Apportionment Act 1870 (c. 35): see *Moriarty v. Regent's Garage Co.* [1921] 2 K.B. 766.

(9) "Salary or wages and emoluments" (s.8, Asylums Officers Superannuation Act 1909 (c. 48)): see *R. v. Lyon* [1921] 1 K.B. 203.

(10) "Salary or standard rate of pay": see *Railway Clearing House v. Druce* 42 T.L.R. 663.

"Salary or remuneration": see REMUNERATION.

See FULL SALARIES; IN RECEIPT; WAGES. Cp. STIPEND.

SALE; SELL; SOLD. (1) "'Sale' undoubtedly, in general, implies an exchange for money; and is so defined in Benjamin on Sale" (*per* Wills, J., *Coats v. Inland Revenue Commissioners* [1897] 2 Q.B. 423; see further *Great Northern Railway v. Inland Revenue Commissioners* [1899] 2 Q.B. 652, cited RELEASE; *Paine v. Cork Co.* 69 L.J. Ch. 158; *John Foster & Sons v. I.R.C.* [1984] 1 Q.B. 516; *Simpson v. Connolly* [1953] 1 W.L.R. 911; *Robshaw Brothers v. Mayor* [1957] Ch. 125; *Littlewoods Mail Order Stores v. I.R.C.* [1963] A.C. 135). Probably, that rule applied to trustees acting under an ordinary power of sale; but the court might, under

s.120(a), Lunacy Act 1890 (c. 5), authorise a sale of a lunatic's realty in consideration of a perpetual rent-charge (*Re Ware* [1892] 1 Ch. 344).

(2) " 'Sale' is co-relative to 'purchase' " (*per* Channell J., *West London Syndicate v. Inland Revenue Commissioners* [1898] 2 Q.B. 507, cited *EQUITABLE*), and "prima facie, means a sale effectual in point of law, including the execution of a contract where the law requires a contract in writing" (*per* Buckley J., *Rosenbaum v. Belson* [1900] 2 Ch. 267, cited *PROCURE*).

(3) A "sale" means the exchanging of property for money and applies to a sale of land and to a sale of chattels equally. An agreement to extinguish an existing debt if land is transferred is not a contract for the Sale of land (*Simpson v. Connolly* [1953] 1 W.L.R. 911).

(4) The word "sale" in s.174(3A)(b) of the Companies Act 1948 (c. 38), as amended by s.91(4) of the Companies Act 1981 (c. 62) means, as in ordinary legislative usage the exchange of property for cash and not for any other form of property; so that shares in a company exchanged for shares in another company were not "sold" within the meaning of this section (*In re Westminster Property Group* [1985] 1 W.L.R. 676).

(5) "A 'sale' supposes a seller, and also, I think, a conveyance" (*per* Bramwell, B., *A.-G. v. Wyndham* 32 L.J. Ex. 6; *cp. Denn v. Diamond* 4 B. & C. 243). See *DISPOSITION*.

(6) "A sale implies that there shall be one who sells and another who buys" (*per* Cockburn C.J., *King v. England* 33 L.J.Q.B. 145); accordingly, it was held in that case that a landlord did not "sell" distrained goods, within s.2, Distress for Rent Act 1689 (2 Wm. & M., c. 5), if he took them at their appraised value, a proceeding which would not give him the property in goods distrained belonging to a third person; nor would the property in the distrained goods pass if, instead of being taken at their appraised value, the goods were formally sold by auction and bought by the landlord under the hammer (*Moore v. Singer Co.* [1904] 1 K.B. 820; see further *Playscoed Collieries Co. v. Partridge* [1912] 2 K.B. 347). The power to "sell" distrained goods under s.2 did not give a purchaser the right to use, in breach of conditions, the article he had bought, *e.g.* he probably could not disregard patent rights, and certainly he could not disregard such rights of which he had notice when he bought the goods (*Incandescent Gas Light Co. v. Brogden* 16 Pat. Ca. 179; *British Mutoscope Co. v. Homer* [1901] 1 Ch. 671). See hereon *Bandische Anilin und Soda Fabrik v. Isler* [1906] 1 Ch. 605.

(7) Where several leaseholds held under one lease are sold in several lots and the expedient is adopted of providing for carrying out the sale by underleases, that is a "sale" and is within a trustee's power of sale (*Re Judd and Poland and Skelcher* [1906] 1 Ch. 684, adopting the dictum of Stirling J. in *Re Webb* [1897] 1 Ch. 144, cited *CONVEYANCE*, and over-ruling *Re Walker and Oakshott* [1901] 2 Ch. 383).

(8) A sale of a forfeited leasehold, within s.2(2), Conveyancing Act 1892 (c. 13), had to be one "completed by conveyance, or the contract entered into had to be an absolute contract for sale" (*per* Joyce J., *Re Castle & Co.* 94 L.T. 396). See *Law of Property Act 1925* (c. 20) s.146(10).

(9) "Bona fide sale" (s.7, Succession Duty Act 1853 (c. 51); see *A.-G. v. Johnson* [1903] 1 K.B. 617, cited *GIFT*).

(10) "The word 'sale' virtually includes within it the word 'mortgage,' which is practically a sale" (*per* Romilly M.R., *Bennett v. Wyndham* 23 Bea. 526); accordingly, it was there held that a prohibition against raising a charge by sale prevented its being done by mortgage.

(11) Power of sale, generally, authorises a mortgage (see *Farwell* (3rd ed.) 508).

but a power of sale conferred by statute for a limited purpose, will not authorise a mortgage, except for the preservation of the property (*Mansel v. Cobham* [1905] 1 Ch. 568).

(12) Power to raise money by “sale or mortgage,” authorises a mortgage with a power of sale (*Bridges v. Longman* 24 Bea. 27; see Farwell (3rd ed.), 508).

(13) A sale within Building Materials and Housing Act 1945 (c. 20), s.7(1), took place at the place where the purchase was completed (*R. v. Edwards Ex p. Joseph* [1947] K.B. 392).

(14) As to the meaning to be attached to the word “sell” in s.13, Markets and Fairs Clauses Act 1847 (c. 14), see *Lambert v. Rowe* [1914] 1 K.B. 38, in which case the court, although construing a penal section, said that the word must be given a popular and not a strict legal meaning.

(15) In the Sale of Goods Act 1893 (c. 71), “ ‘sale’ includes a bargain and sale, as well as a sale and delivery.” See further *Priest v. Last* [1903] 2 K.B. 148, cited MAKE KNOWN; *Wren v. Holt* [1903] 1 K.B. 610, cited MERCHANTABLE; *Menzies v. M’Lennan* 32 Sc. L.R. 231, cited OBTAIN; *Clarke v. Army & Navy Co-operative Society* [1903] 1 K.B. 155, cited WARRANTY; see also Sale of Goods Act 1893 (c. 71), s.22, as to sale in market overt, and s.25(3) as to mercantile agent. See also *Mischeff v. Springett* [1942] 2 K.B. 331, 336.

(16) “Sale . . . by description” (Sale of Goods Act 1893 (c. 71), s.13). These can be a “sale by description” of a specific chattel, as for example a car advertised as of a particular year and power, even where it is displayed to and inspected by the buyer so long as it is sold not merely as the specific thing but as a thing corresponding to a description, so that the buyer relies in part on the description (*Beale v. Taylor* [1967] 1 W.L.R. 1193).

(17) “Sale of goods.” A contract to paint a portrait is not a contract for sale of goods, but for work and labour (*Robinson v. Graves* [1935] 1 K.B. 579).

(18) “Person who sells” (Merchandise Marks Act 1887 (c. 28), s.2(2)). Where, in order to complete a sale, goods have to be transferred or appropriated, the person who transfers or appropriates the goods is a “person who sells” within the meaning of this section (*Preston v. Albuery* [1964] 2 Q.B. 796).

(19) A person “sells” a firearm within the meaning of ss.11 and 19 of the Firearms Act 1937 (c. 12) if the property passes, even though he retains the right to possession (*Watts v. Seymour* [1967] 2 Q.B. 647).

(20) The supply at a price by a club to one of its members of intoxicants to be consumed by him off the premises, was not a “sale” within s.3, Licensing Act 1872 (c. 94) (*Graff v. Evans* 8 Q.B.D. 373; *Newell v. Hemingway* 58 L.J.M.C. 46). The ruling in *Graff v. Evans* applied if the intoxicants were supplied to a member of a club by delivery to his agent, e.g. his wife (*Davies v. Burnett* [1902] 1 K.B. 666), but the transaction had to be a bona fide delivery to a member of a bona fide club (*Woodley v. Simmonds* 60 J.P. 150; *Clarke v. Griffiths* [1927] 1 K.B. 226). See DRUNKEN PERSON.

(21) An executory agreement for sale at a customer’s house was not a sale on unlicensed premises within s.65 of the Licensing (Consolidation) Act 1910 (c. 24) (*Titmus v. Littlewood* [1916] 1 K.B. 732).

(22) “Sale of the liquor” (Licensing Act 1953 (c. 46), s.154(1); Licensing Act 1964 (c. 26), s.196(1)). Where guests at a party had previously paid fixed sums into a “kitty” and then, at the party, helped themselves to intoxicating drinks without at the time making any payment there was, nevertheless a “Sale” of liquor within the meaning of this section (*Doak v. Bedford* [1964] 2 Q.B. 587).

(23) “Sells . . . intoxicating liquor . . . without a licence” (Finance Act 1910

(c. 8), s.50(3)). A hotel proprietor so sold within the meaning of the subsection if he countenanced a sale by a waiter of liquor got in by the waiter, and sold for his own profit (*Hotel Regina (Torquay) Ltd. v. Moon* [1940] 2 K.B. 69). See SUFFER.

(24) Place of sale of intoxicants: see *Pletts v. Campbell* [1895] 2 Q.B. 229, disapproving *Stretch v. White* 25 J.P. 485; but *Pletts v. Campbell* was distinguished in *Pletts v. Beattie* [1896] 1 Q.B. 519; see further *Morrison v. Stubbs* 61 J.P. 486; *Stephenson v. Rogers* 80 L.T. 193. Cp. EXPOSE. See also *Cocker v. McMullen* 81 L.T. 784; *Walker v. Walker* 90 L.T. 88; *Hewitt v. Jervis* 68 J.P. 54; *Strickland v. Whittaker* 90 L.T. 445. Probably, the result of the cases, especially the three lastly cited, is that the PLACE where the liquor is definitely appropriated for the customer, is the place of its sale; yet sometimes that may be an executory contract, as to which, see *Strickland v. Whittaker* sup.; cp. *Mackenzie v. Spear* L.J.K.B. 546, and *Noblett v. Hopkinson* [1905] 2 K.B. 214, both cited OPEN. *Pasquier v. Neale* ([1902] 2 K.B. 287) was a peculiar case on the facts.

(25) Where goods were “sold” under a *feri-facias*, the 14 days from the time of their “sale,” under s.87, Bankruptcy Act 1869 (c. 71), would begin to run when the sale was completed which the writ authorised, *i.e.* the end of the last day of sale (*Jones v. Parsell* 11 Q.B.D. 430; *Re Cripps, Ross & Co.* 58 L.J.Q.B. 19). See Bankruptcy Act 1914 (c. 59), s.41. See “proceeds of sale,” inf.

(26) When a statute directed an officer to sell goods he had levied under an execution, that sale gave the purchaser a good title to the goods, even as against their true owner, *e.g.* the sale contemplated by s.87, Bankruptcy Act 1869 (c. 71)—see Bankruptcy Act 1914 (c. 59) s.41—(*per Mellish* L.J. *Ex p. Villars* 9 Ch. 432), or the sale by the bailiff directed by the concluding words of s.156 County Courts Act 1888 (c. 43) (*Goodlock v. Cousins* [1897] 1 Q.B. 558), or the sale of a distress under Damage, etc. Act 1690 (2 Will. & M., sess. 1, c. 5) (see Cockburn C.J., *King v. England* 33 L.J.Q.B. 145). But a mere levy by an officer and a sale thereunder, gave no title to the goods of the third party which had been so levied, if there was nothing more than the levy to justify the sale, *e.g.* a levy by a county court bailiff if no claim was made under s.156, County Courts Act 1888 (*Crane v. Ormerod* [1903] 2 K.B. 37, distinguished *Goodlock v. Cousins* sup.), and an officer who levied and sold the goods of a third party was, generally, liable to such third party (*Jelks v. Hayward* [1905] 2 K.B. 460).

(27) A power to “sell, means, in the absence of any context, a power to sell for money; and a person who exercises such a power is bound to sell for money” (*per Stirling J.*, *Paine v. Cork Co.* 69 L.J. Ch. 158; see *Coats v. Inland Revenue Commissioners* [1897] 2 Q.B. 423, and *Re Ware* [1892] 1 Ch. 344, both cited SALE). The power to “sell” of a liquidator in the winding-up of a company was so restricted under s.95, Companies Act 1862 (c. 89), except as it was widened by s.161; that latter section was the limit of his power thereunder and it was not competent for a company, even by its articles, to confer additional power or to deprive dissentient shareholders of their rights under the section (*Paine v. Cork Co.* [1900] 1 Ch. 308; see Companies Act 1948 (c. 38), s.245); but where a sale was under the memorandum of association, see *Doughty v. Lomagunda Reefs* [1902] 2 Ch. 837.

(28) As to when a sale was perfected within ss.6–9, Sale of Food and Drugs Act 1875 (c. 63), see *Kirk v. Coates* 16 Q.B.D. 49; *Fecitt v. Walsh* [1891] 2 Q.B. 304.

(29) “Sells” (Food and Drugs Act 1955 (c. 16), s.2(1)). A pharmaceutical chemist who supplied a medicine under a National Health Service prescription was held not to have “Sold” it to the executive council (*Appleby v. Sleep* [1968] 1 W.L.R. 948).

(30) “Sells pre-packed food” (Pre-packed Food (Weights and Measures: Mark-

ing) Order 1950 (No. 1125), art. 6). A person who sells as agent for a named principal, and who, under the contract, has no right to take possession of the goods or examine them is not a seller within the meaning of this Order (*Lester v. Balfour Williamson Merchant Shippers* [1953] 2 Q.B. 168).

(31) “Sell the goodwill” (National Health Service Act 1946 (c. 81), s.35(1)). A covenant by a retiring partner not to treat or attend present or past patients of the partnership, and for which there was no other valid consideration, was a sale of the goodwill within the meaning of this section (*Macfarlane v. Kent* [1965] 1 W.L.R. 1019).

(32) Commission on sale or leaseholds, calculation of: see *Biggs v. Gordon* 8 C.B.N.S. 638. Commission on a sale of property is generally earned when the purchaser has signed the contract, even though the contract goes off, e.g. on a question of title. See *Skinner v. Andrews* 54 S.J. 360; cp. PROCURE; INTRODUCE; OBTAIN.

(33) “Contract of sale of land” (s.1, Vendor and Purchaser Act 1874 (c. 78)) included a contract for a lease (*Jones v. Watts* 43 Ch. D. 574): see VENDOR. But as to whether a power of sale included a power to grant leases, see *Jervoise v. Clarke* 6 Mad. 96; *Evans v. Jackson* 8 Sim. 217.

(34) An authority to “sell” property includes an authority to sign a binding contract therefor (*Rosenbaum v. Belson* [1900] 2 Ch. 267, cited PROCURE).

(35) “Sale, purchase or exchange of any property” (R.S.C., Ord. 86, r. 1(1)). A contract for the grant of a lease, even if it is a long lease at a low rent “sold” for a substantial premium, is not an agreement for the “sale” of property within the meaning of this rule (*Young v. Markworth Properties* [1965] Ch. 475). Such an agreement means an agreement for sale in consideration of money and not of money’s worth (*Doyle v. East* [1972] 1 W.L.R. 1080).

(36) “Sale or purchase” (the old R.S.C. Ord. 14 A) meant prima facie a sale or purchase for money, and therefore could not apply to a contract for the transfer of property for which there had been no monetary consideration (*Robshaw Bros. v. Mayer* [1957] 1 Ch. 125).

(37) The compulsory acquisition of part of an estate was not a “sale” within the meaning of the terms of a conveyance of another part of the estate (*Marten v. Flight Refuelling* [1962] Ch. 115).

(38) Plant was not sold within Income Tax Act 1945 (c. 32), s.71(1)—see now Capital Allowances Act 1968 (c. 3), s.33—when owners of some shares in a fishing partnership enterprise sold their shares to other owners (*Inland Revenue Commissioners v. West* 1950 S.L.T. 337). The compulsory acquisition of a company and its stock by the Transport Commission under the Transport Act 1947 (c. 49) was not a “sale of plant and machinery” within this section (*Bramford’s Road Transport v. Evans* [1953] 1 W.L.R. 1385). Nor were railway wagons owned by a firm of coal merchants “sold” within the meaning of this section when they were compulsorily vested in the British Transport Commission by virtue of s.29 of the Transport Act 1947 (c. 49) (*Kirkness v. Hudson (John) & Co.* [1955] A.C. 696).

(39) “Sales under the Lands Clauses Consolidation Act”, etc., r. 11, Sched. 1, Pt. 1, Solicitors Remuneration Order, meant “transactions” (*Re Burdekin* [1895] 2 Ch. 136; see especially judgment of Lopes L.J.).

(40) A covenant by a lessor not to permit adjoining premises to be used for the sale of tobacco, cigars and cigarettes is not broken by the normal sale of cigarettes at an A.B.C. teashop (*Lewis (A.) & Co. (Westminster) v. Bell Property Trust* [1940] Ch. 345).

(41) Power of attorney, as to construction of clause in, empowering sales: see

Hawksley v. Outram [1892] 3 Ch. 359; such a power does not authorise a pledge (*Jonmenjoy Coondoo v. Watson* 9 A.C. 561, cited NEGOTIATE).

(42) "Make . . . any sale" (Charitable Trusts Amendment Act 1855 (c. 124), s.29): a "sale" within the meaning of the section was made when a contract was entered into by the owners of the property in question for the sale of the property to some purchaser (*Milner v. Staffordshire Congregational Church* [1956] Ch. 275).

(43) "Sale" (s.1(1), Profiteering Act 1919 (c. 66)) held to include the making up of a medicine by a chemist and the handing of the preparation to the person ordering it in exchange for a money payment: see *R. v. Wood Green Profiteering Committee* 89 L.J.K.B. 55.

(44) "On a sale" in s.5, Settled Land Act 1882 (c. 38), held to include a contemplated or intended sale as well as a sale which has actually been made: see *Re Knight's Settled Estates* [1918] 1 Ch. 211; s.69, Settled Land Act 1925 (c. 18).

(45) "Produced . . . for . . . sale" (Purchase Tax Act 1963 (c. 9), Sched. 1, Group 25). Articles given free to customers who purchased a specific quantity of petrol had not been "produced for sale" (*Esso Petroleum Co. v. Customs and Excise Commissioners* [1976] 1 W.L.R. 1).

(46) "Sale, transfer or other disposition" of an interest in a ship: see *Deddington S.S. Co. v. Inland Revenue Commissioners* [1911] 1 K.B. 1078, cited DISPOSITION.

"On the Sale," see ON.

State. Def., Sale of Goods Act 1893 (c. 71), s.1; Food and Drugs Act 1955 (c. 16), s.16(1); Finance Act 1973 (c. 51), s.4(1); Sale of Goods Act 1979 (c. 54), s.61; Food Act 1984 (c. 60), s.16.

See BY WEIGHT; FOR SALE; PURCHASE; RETAIL; SAMPLE; SELLER; SELLING; CONVEYANCE; PROCEEDS.

SALE ON TRIAL. (1) "Other instances of sales, dependent on conditions precedent, are afforded by 'sales on trial,' or 'approval,' and by the bargain known as 'sale or return.' In the former class of cases there is no sale till the approval is given, either expressly, or by implication resulting from keeping the goods beyond the time allowed for trial. In the latter case the sale becomes absolute, and the property passes only after a reasonable time has elapsed, without the return of the goods" (Benj. (3rd ed.) 590, 591, cited with approval *Elphick v. Barnes* 5 C.P.D. 326). But, *semble*, sales on "approval" are now put on the same footing as those "on sale or return," by Sale of Goods Act 1893 (c. 71), s.18, r. 4.

(2) In sales "on trial," the buyer has the whole of the agreed time in which to exercise his option (Benj. (8th ed.) 318); and, in the absence of negligence on his part, the loss of the subject-matter before that time falls on the seller (*Elphick v. Barnes* sup.).

SALE OR RETURN. (1) In the bargain "sale or return," the receiver of the goods solely has the option of returning them; the supplier cannot demand their return, and can only sue for their price or value (*per* Esher M.R., *Kirkham v. Attenborough* [1897] 1 Q.B. 201). The property passes to such receiver and the transaction is conducted when (a) he signifies acceptance to the seller, or (b) he retains the goods (without notice of rejection) beyond the fixed time, or (where there is no time fixed) beyond a reasonable time, or (c) he does any "act adopting the transaction" (Sale of Goods Act 1893 (c. 71), s.18, r. 4); and such lastly mentioned act means some act "inconsistent with anything except his being the purchaser" (*per* Lopes, L.J., *Kirkham v. Attenborough* sup.), e.g. as held in that case, pledging the goods. The inconsistent act, moreover, must be done by the receiver himself or by

someone on his behalf and with his authority, as distinguished from its being done by a third party to whom the receiver has merely delivered the goods for a special purpose (*Weiner v. Gill* [1906] 2 K.B. 574, criticised in *Weiner v. Harris* [1910] 1 K.B. 285, cited *MERCANTILE AGENT*; *Kempler v. Bravington* 41 T.L.R. 414). Cp. *HOLD OUT*; see also *Genn v. Winkel* 28 T.L.R. 483. See further *Moss v. Sweet* 16 Q.B. 493; *Ray v. Barker* 4 Ex. D. 279; *Ex p. Wingfield* 10 Ch. D. 591; *Harper v. Granville-Smith* 7 T.L.R. 284; Benj. (8th ed.) 315 *et seq.*

(2) A bargain “on sale for cash only or return” is not one within the statutory terms of “on sale or return” (*Weiner v. Gill* *sup.*, distinguishing and doubting *Bryce v. Ehrmann* 42 Sc. L.R. 23).

(3) Where a time is specified in a “sale or return” bargain, it will be reckoned from the receipt of the goods by the buyer (*Jacobs v. Harbach* 2 T.L.R. 419).

(4) (Sale of Goods Act 1893 (c. 71), s.18, r. 4). A person does not “retain” goods in his possession on sale for cash or return if, before the time fixed for the return of goods, they are taken in execution (*Re Ferrier Ex p. the Trustee v. Donald* [1944] Ch. 295).

(5) “Sale or return” (Sale of Goods Act 1893 (c. 71), s.18, r. 4) includes situations where the recipient of the goods intends not to buy them himself but to sell them to third parties (*Poole v. Smith’s Car Sales (Balham)* [1962] 1 W.L.R. 744).

SALEABLE COMMISSION. “Saleable commission” in the army, prior to the Royal Warrant of July 20, 1871, abolishing purchase in the army. See *Regulation of the Forces Act 1871* (c. 86), s.3. See *REGULATION*.

SALEABLE UNDERWOOD. (1) What were “saleable underwoods” within 43 Eliz., c. 2, was a question of fact (*R. v. Narberth North* 9 A. & E. 815; see further *R. v. Mirfield* 10 East, 224; *R. v. Ferrybridge* 1 B. & C. 379—383, n.); and in *Fitzhardinge v. Pritchett* (L.R. 2 Q.B. 135) it was held that beech trees of 30 years’ growth might be cut and managed as “saleable underwood” so as to be rateable under that statute. See *PLANTATION*.

(2) As to what passes under a grant of “saleable underwoods,” see *WOOD*; *Touch*. 95.

See *UNDERWOOD*; *PROPERTY OTHER THAN LAND*.

SALICETUM. “*Salicetum* doth signifie a wood of willowes, *ubi salices crescunt*. These trees in our bookes are called *sawces*” (Co. Litt. 4 b).

SALIVA. “By the grant of the boillourie of salt, it is said that the soile shall passe, for it is the whole profit of the soile. And this is called *saliva*, of the French word *salure* for a salt-pit; and you may read *de saliva* in Domesday, and *selda* signifieth the same thing; and where you shall reade in records *de lacertâ in profunditate aquæ salsæ*, there *lacertâ* signifieth a fathom” (Co. Litt. 4 b). But a little further on it is said, “*Selda* is a wood of sallows, willows, or withies”; see also *SELDA*; *Touch*. 95. Cowel gives the word as “salina,” and, under *selda*, thought Coke mistaken in taking “selda” for a salt pit.

SALMON. (1) Stat. Def., Salmon and Freshwater Fisheries Act 1975 (c. 51), s.41; Import of Live Fish (England and Wales) Act 1980 (c. 27), s.4; Fisheries Act 1981 (c. 29), s.44.

See *FRY*; *FISHERY*; *FISHING*; *SEA FISH*.

SALT. (1) In the memorandum of a policy of insurance, "salt" does not include saltpetre (1 Park, 245).

(2) To "salt" an invoice means the addition of a commission to the price at which goods have been purchased (*Ex p. Johnson* 30 L.J. Bank. 38).

SALTATORIA. See DEER LEAP.

SALVAGE. (1) "The taking care of goods left by the tide upon the banks of a navigable river, communicating with the sea, may in a vulgar sense be said to be salvage; but it has none of the qualities of salvage, in respect of which the laws of all civilised nations, the laws of oleron and our own laws in particular, have provided that a recompense is due for the saving, and our law has also provided that this recompense should be in lien upon the goods which have been saved" (*per* Eyre C.J., *Nicholson v. Chapman* 2 Bl. H. 257), *i.e.* "the service must be successful" (*The Edward Hawkins* 31 L.J.P.M. & A. 46).

(2) "Salvage, in its simple character, is the service which those who recover property from loss or danger at sea, render to the owners, with the responsibility of making restitution, and with a lien for their reward. It is personal, in its primary character at least" (*per* Lord Stowell, *The Thetis* 3 Hagg. Adm. 48; see further *Aitchison v. Lohre* 4 App. Ca. 755).

(3) Life salvage: see ss.544, 545, Merchant Shipping Act 1894 (c. 60); BELONGING; *The Pacific* [1898] P. 170, cited PART.

(4) By the original law of the Admiralty Court, salvage is claimable only for a SHIP, her apparel and cargo (including flotsam, jetsam and lagan), and the wreck of these, and freight; by statute, life salvage is added (*The Gas Float Whitton No. 2* [1896] P. 42, affirmed in H.L. [1897] A.C. 337).

(5) Pt. 9, Merchant Shipping Act 1894 (c. 60), s.510: "'Salvage' includes all expenses properly incurred by the salvor in the performance of the salvage services."

(6) "Salvage due under this Act" (s.552, Merchant Shipping Act 1894 (c. 60)) refers to all cases in which salvage may become payable by the decree of any court having jurisdiction under the Act to determine salvage disputes (*The Fulham* [1899], P. 251).

(7) "Reasonable amount of salvage" (ss.458, 460, Merchant Shipping Act 1854 (c. 104)—see now ss.546, 547, Merchant Shipping Act 1894 (c. 60)): see *Beardnell v. Beeson* 9 B. & S. 315.

(8) Principles governing the amount of salvage: see *The William Beckford* 3 Rob. C. 355; *The Glengyle* [1898] P. 97; [1898] A.C. 519. See further *The Baku Standard* [1901] A.C. 549; *The Germania* [1904] P. 131; *The Port Hunter* [1910] P. 343; *The San Onofre* [1917] P. 96.

(9) An agreement to equitably apportion salvage is not an agreement to "abandon" salvage, within s.182, Merchant Shipping Act 1854 (c. 104)—see now, s.156, Merchant Shipping Act 1894 (c. 60) (*The Wilhelm Tell* [1892] P. 337).

(10) Salvage "for owners' and charterers' equal benefit," "means the net pecuniary result of salvage operations" (*per* Bigham J., *Booker v. Pocklington S.S. Co.* [1899] 2 Q.B. 694). See further *Cargo ex Port Victor* [1901] P. 243; *The Minneapolis* [1902] P. 30; *The Auguste Legembre* [1902] P. 123; *The August Korff* [1903] P. 166; *The Elswick Park* 72 L.J.P.D. & A. 79; *Crouan v. Stanier* [1904] 1 K.B. 87, distinguishing *The Pickwick* 16 Jur. 669; *The Duc D'Aumale* [1904] P. 60; *The Friesland* [1904] P. 345; *The Maréchal Suchet* 80 L.J.P. 51.

(11) "'Salvage charges' may, no doubt, in some connections mean claims for

volunteer salvage services. But it is quite common to use the words for the purpose of describing those expenses which come within the scope of suing and labouring expenditure" (*per* Bigham J., *Western Assurance v. Poole* [1903] 1 K.B. 383, cited TOTAL LOSS).

(12) Salvage allowances and lien to mortgagees, trustees, etc., in regards to outlay in preserving the subject-matter of the mortgage, trust, etc.: see *Securities & Properties Corporation v. Brighton Alhambra* 62 L.J. Ch. 566; *Re Montagu* [1897] 2 Ch. 8, cited REBUILDING; *Re Waldegave* [1899] W.N. 240.

(13) But the general principle is that the doctrine of maritime salvage "has no application to goods on land, nor to anything except ships or goods in peril at sea. With regard to ordinary goods on which labour or money is expended with a view of saving them or benefiting the owner, there can be only one principle upon which any claim for repayment can be based—and that is, if you can find facts from which the law will imply a contract to repay or to create a lien" (*per* Bowen L.J., *Falcke v. Scottish Insurance* 34 Ch. D. 249). Salvage on land is not a recognised head of claim in the common law (*Sorrell v. Paget* [1950] 1 K.B. 252). See further *Re Winchilsea* 39 Ch. D. 168.

(14) As to the rule as to salvors rendering services at request, see *The Tarbert* [1921] P. 372.

"Salvage charges." Stat. Def., Marine Insurance Act 1906 (c. 41), s.65.

Stat. Def., Pensions (Mercantile Marine) Act 1942 (5 & 6 Geo. 6, c. 26), s.10; Road Traffic Regulation Act 1967 (c. 76), s.104.

See SUE AND LABOUR; EXTORTION; DURESS; SALVOR; TOWAGE; WITHOUT BENEFIT OF SALVAGE; CLAIM.

SALVOR. (1) (Merchant Shipping Act 1894 (c. 60), s.742) " 'Salvor' means (in the case of salvage services rendered by the officers or crew, or part of the crew, of any ship belonging to Her Majesty) the person in command of that ship."

(2) A pilot on board a salving ship may be a salvor entitled to share in salvage remuneration if he runs risk outside his ordinary duties (*The Santiago* 70 L.J.P.D. & A. 12).

SAME. (1) "The same" generally refers to the last preceding antecedent (Co. Litt. 20 b, 385 b); but need not necessarily mean the whole of the premises indicated (*Rolfe v. Thompson* [1892] 2 Q.B. 196, cited SAMPLE).

(2) As to the antecedent to which the "same" refers, see *Huskisson v. Lefevre* 26 Bea. 160; but "the word 'same' may grammatically refer to more than one antecedent" (*per* Jessel M.R., *Court v. Buckland* 1 Ch. D. 605). A devise of "my estate called L." to A for life, "and after his decease I give the same" unto B, without words of limitation, was held to give B only a life interest (*Doe d. Lean v. Lean* 1 Q.B. 229). But this case was on a will made previously to the Wills Act 1837 (c. 26), and seems to have turned on the word "estate" as implying merely local situation, rather than as laying down that because A was to have a life estate, therefore B was to have "the same."

(3) "Unless the same shall have been otherwise determined" (s.25, Companies Act 1867, (c. 131)): see *per* Lord Herschell *Ooregum Co. v. Roper* [1892] A.C. 125, cited OTHERWISE.

(4) The antecedent of "the same" in s.9, Factory and Workshop Act 1878 (c. 16), was "machinery," and not merely the part in motion, and therefore it was an offence within that section to employ a child under 14 to clean the fixed part of machinery in motion (*Pearson v. Belgian Mills* [1896] 1 Q.B. 244).

(5) “Same business,” covenant against: see *Ashby v. Wilson* [1900] 1 Ch. 66, cited *COFFEE-HOUSE*. To carry on “the same business” does not mean that it must be done in a shop; it means selling similar goods (*Brampton v. Beddoes* 11 W.R. 268).

(6) “Same cause of complaint” within the judgment of Evans, P., in *Stokes v. Stokes* [1911] P. 195, 199, does not mean where there has been a decision on facts alleging desertion by one spouse, that the evidence then before the court is entirely shut out from being heard at subsequent proceedings (*Molesworth v. Molesworth* [1947] 2 All E.R. 842). See *CAUSE*.

(7) “Same or similar character” (Criminal Law Act 1977 (c. 45), s.23(7)(a)). Where a person charged with two offences, one of which is an offence prima facie triable summarily, elects on the other to be tried by a jury, it is not necessary for the offences to be charged under the same section of the same Act in order for the offences “to constitute or form part of a series of two or more offences of the same or similar character” within the meaning of this section, and so to be tried together. But there must be a nexus between the offences, which must be similar in fact and in law. For s.23(7)(a) to apply the other offences must (1) bear a similarity of both fact and law; (2) be triable summarily or on indictment; and (3) form part of a series of offences separated in time (*Re Prescott* (Note (1979) 70 Cr. App. R. 244; *R. v. Hatfield Justices, ex p. Castle*, [1981] 1 W.L.R. 217; *R. v. Leicester Justices, ex p. Lord* [1980] Crim. L.R. 581).

(8) The “expression ‘under the same circumstances’ must now be taken to mean, under like circumstances as regards the services performed by the railway company in receiving, carrying, and delivering, the goods—see *Great Western Railway v. Sutton* L.R. 4 H.L. 226; *London & North Western Railway v. Evershed* 3 Q.B.D. 134, 254” (per Lindley L.J., *Manchester, Sheffield & Lincolnshire Railway v. Denaby Main Co.* sup.). See further *Hull etc. Railway v. Yorkshire etc. Coal Co.* 56 L.J.Q.B. 261; see also *Taylor v. Metropolitan Railway* [1906] 2 K.B. 55.

(9) “Same class” (Finance Act 1965 (c. 25), Sched. 6, para. 27 (3)). Where, on a reorganisation, shares transferrable at will are acquired in place of shares which had been subject to restrictions on the right of transfer, these shares were not of the “same class” within the meaning of this paragraph (*I.R.C. v. Beveridge* [1979] T.R. 305).

(10) “Same description” of goods: see *Great Western Railway v. Sutton* L.R. 4 H.L. 226, sup., para. (8).

(11) Where a rule, made under an Act, is to have “the same effect” as if contained in the Act, then, if validly made, it is for all purposes to be treated exactly as if it were in the Act itself (*Patent Agents Institute v. Lockwood* [1894] A.C. 347, especially per Herschell C.). Cp. “like effect,” under *LIKE*.

(12) “Same family”: see *Mackenzie v. Cameron* 31 Sc. L.R. 347, cited *FAMILY*.

(13) “Same ground,” in a commercial traveller’s contract of service: see *Mumford v. Gething* 29 L.J.C.P. 105.

(14) “Same household” (Domestic Violence and Matrimonial Proceedings Act 1976 (c. 50), s.1(2)). A man and woman living as man and wife in a two-roomed council flat, but, due to a deteriorating relationship, occupying separate rooms and leading separate lives, were held to be occupying the “same household” for the purposes of this Act (*Adeoso v. Adeoso* [1980] 1 W.L.R.).

(15) “Same interest”: “Numerous persons having the same interest” (R.S.C., Ord. 16, r. 9, now Ord. 15, r. 12) includes only those who have a common interest in some property or proprietary right: the phrase includes persons who may be assumed to be interested in a tort (*Taff Vale Railway v. Amalgamated Society etc.* [1901] A.C. 426); so that members of an unincorporated club may be sued in tort in

a representative capacity (*Campbell v. Thompson* [1953] 1 Q.B. 445). Growers of fruit, flowers, etc., who use Covent Garden market had the "same interest" in the cart stands in the market; for under the Regulation of Covent Garden Market Act 1828 (9 Geo. 4, c. cxiii), they had preferential rights to resort to such stands (*Ellis v. Bedford* [1899] 1 Ch. 494, affirmed in H.L. [1901] A.C. 1). See further *Wood v. McCarthy* [1893] 1 Q.B. 775; *Markt v. Knight S.S. Co.* [1910] 2 K.B. 1021; *Hardie and Lane v. Chiltern* [1928] 1 K.B. 663. Four council tenants opposing a proposed means-tested rent increase scheme did not have the "same interest" since, if the scheme were carried out the more affluent tenants would subsidise the less affluent and there could therefore be a conflict of interest (*Smith v. Cardiff Corporation* [1954] 1 Q.B. 210).

(16) "Same kind" (Weights and Measures Act 1963 (c. 31), s.26(7)). See *Ellis v. Price* (1968) 66 L.G.R. 404 for a discussion as to whether split tin and sandwich loaves are "articles of the same kind" within this section.

"Same manner," "same time and manner," "same terms and conditions": see *AFORESAID*; *COURT*; *FEME*. Cp. *MANNER*.

(17) "Same occasion" (Transport Act 1981 (c. 56), s.19(1)). The two offences of failure to stop after an accident and failure to report that accident to the police were committed on the "same occasion" for the purposes of this section (*Johnson v. Finbow* [1983] 1 W.L.R. 879).

(18) (a) "Same offence" (s.6, Habeas Corpus Act 1679 (c. 2)): see *A.-G. Hong Kong v. Kwok-a-Sing* L.R. 5 P.C. 179.

(b) Where two defendants were charged with offences which were similar in nature, subject-matter and circumstances, and immediately successive one to the other, those offences might have been the "same offences" for the purposes of s.1(f)(iii) of the Criminal Evidence Act 1898 (c. 36) (*R. v. Russell (George)* [1971] 1 Q.B. 151). For offences to be regarded as "the same offence" for the purposes of this section they must be the same in all material respects, including the time at which they were committed (*R. v. Hills* [1978] 3 W.L.R. 423). Co-accuseds are only "charged with the same offence" if they are alleged to have been pursuing the same enterprise, not where the essence of the case is that each has committed an offence against the other (*R. v. Rockman* (1978) 67 Cr. App. R. 171). Two defendants charged on the same indictment with assaulting each other are not "charged with the same offence" for the purposes of this section (*R. v. Lauchlan* (Note) [1978] R.T.R. 326).

(19) Offices in the W.1 and E.C.3 areas of London were in the "same place" for the purposes of s.49(12)(a) of the Bills of Exchange Act 1882 (c. 61) (*Hamilton Finance Co. v. Coverley etc. Finance Co.* [1969] 1 Lloyd's Rep. 53).

(20) "The expression 'passing only over the same portion of the line' (s.90, Railways Clauses Consolidation Act 1845 (c. 20)) appears to us to mean passing between the same points of departure and arrival, and passing over no other part of the line. This is the natural interpretation of the words; it was adopted by Cranworth C., in *Finnie v. Glasgow Railway* (2 Macq. 77), and by the Court of Session in the recent case of *Murray v. Glasgow & South-Western Railway* (11 Sess. Ca. 205); and there is no decision in which any other interpretation has been put on the expression" (*per* Lindley L.J., delivering judgment of C.A., *Manchester, Sheffield & Lincolnshire Railway v. Denaby Main Co.* 14 Q.B.D. 209, affirmed by H.L., 11 App. Ca. 97).

(21) "Same position": cp. "like position," *London County Council v. A.-G.* [1902] A.C. 165, cited *POSITION*.

(22) "Same power" of removing old, as of granting new, licences (s.26, Licensing

Act 1910 (c. 24)): see *R. v. Drinkwater* [1905] 2 K.B. 409, cited REMOVAL; *R. v. Southampton* [1929] 1 K.B. 263.

“Same premium and conditions”: see WARRANTED HIGHEST RATE. Cp. SUBJECT TO.

“Same qualification” see QUALIFICATION.

(23) “Same rent and covenants,” “same form”: “On the whole, it is indisputably settled that the words ‘under the same rent and covenants’ are not, of themselves, sufficient to include the covenant for renewal. Nor will a covenant to grant a lease ‘in the same form’ include a covenant for renewal” (1 Platt. 724; see further *ibid.* 713–724).

(24) “Same or similar services” (s.27(2), Railway and Canal Traffic Act 1888 (c. 25)): see *Mansion House Association v. London & South Western Railway* [1895] 1 Q.B. 927.

(25) “Same state of investment”: see *Re Morris, Bucknill v. Morris* 54 L.J. Ch. 388; INVESTMENT. Cp. *Re Smith* [1902] 2 Ch. 667, cited RETAIN.

(26) “Same state” (Food and Drugs Act 1955 (c. 16), s.115). Pasteurised milk is not in the “same state,” within the meaning of this section, as it was in before pasteurisation (*Hall v. Owen-Jones* [1967] 1 W.L.R. 1362). A bulk quantity of meat which is cut up into smaller portions for sale, is no longer “in the same state” for the purposes of this section (*Tesco Stores v. Roberts* [1974] 1 W.L.R. 1253). Packs of puff pastry purchased by the shopkeeper and immediately placed in a deep freeze were held to have been sold in the “same state” as when purchased in circumstances where eleven days later a customer bought two packs from a shelf where they had been placed to thaw (*Walker v. Baxter’s Butchers* (1978) 76 L.G.R. 183).

(27) In the same “street”: see *A.-G. v. Edwards* [1891] 1 Ch. 194, cited IN. “Same town or place”: see TOWN.

(28) (a) “Same terms”: see *Metropolitan Electric Supply Co. v. Ginder* [1901] 2 Ch. 799, cited UNDUE PREFERENCE.

(b) A clause in a tenancy agreement giving the tenant the option “of continuing the tenancy for a further period of six months on the same terms and conditions, including this clause” was held to give the tenant an option to continue for one further period of six months and no more (*Green v. Palmer* [1944] Ch. 328).

“One and the same time, and from one and the same source”: see ONE TIME.

(29) “Same transaction” (R.S.C., Ord. 16, r. 1, now Ord. 15, r. 4): see *Stroud v. Lawson* [1898] 2 Q.B. 44; *Oxford and Cambridge Universities v. Gill* [1899] 1 Ch. 55; *Drincqbier v. Wood* [1899] 1 Ch. 393; *Ellis v. Bedford* [1901] A.C. 1.

(30) “Same trusts”: for the meaning of these words in a will, see *Garratt v. Garratt* 91 L.J.P. 207.

(31) “Upon the same trusts and purposes”: see *Re North* 76 L.T. 186, discussing *Re Perkins* 67 L.T. 743. Cp. *Re Walpole* [1903] 1 Ch. 928, cited ALL.

(32) “Same VOYAGE”: see *Gether v. Capper* 24 L.J.C.P. 69; 25 *ibid.* 260.

See LIKE; SIMILAR.

SAMPLE. (1) “A part of a fluid or substance taken from some larger quantity because it is a fair representation of the whole” (*per* Dixon J., in *Laury v. West* 73 C.L.R. 289, 299).

(2) “A sale by sample only has reference to the quality of the article sold” (*per* Parke B., *Nichol v. Godts* 10 Ex. 191). In that case the contract was for “foreign refined rape oil, warranted only equal to samples,” and it was held that the buyer

was not bound to accept oil which corresponded with the samples, but was not foreign refined rape oil. See also *Azemar v. Casella* L.R. 2 C.P. 677; and cp. *Heyworth v. Hutchinson* L.R. 2 Q.B. 447.

(3) But a sale “per sample,” simpliciter, is a warranty that the bulk shall be equal to the sample (*Parker v. Palmer* 4 B. & Ald. 387); yet a sale by sample does not exclude implied warranty of merchantable quality respecting such matters as the sample would not disclose to a purchaser using ordinary skill and diligence (*Mody v. Gregson* L.R. 4 Ex. 49; *Drummond v. Van Ingen* 12 App. Ca. 284). See REPORT.

(4) Sale of Goods Act 1893 (c. 71), s.15, a sale by sample implies “that the bulk shall correspond with the sample in quality”; that “the buyer shall have a reasonable opportunity of comparing the bulk with the sample”; and “that the goods shall be free from any defect rendering them unmerchantable, which would not be apparent on reasonable examination of the sample.”

(5) “In order to raise the implied warranty by sample, it is not sufficient that a part of the goods shall have been drawn and exhibited, unless it is expressly referred to in the bargain as such, and due precaution taken for identifying the sample” (*per* Inglis L.P., *White v. Dougherty* 28 Sc. L.R. 732, adopting and applying s.98, Bell’s Principles). See also *Wallis v. Pratt* [1911] A.C. 394, cited DESCRIPTION. See *Perkins v. Bell* [1893] 1 Q.B. 193, cited ACCEPTANCE.

(6) The “sample,” *e.g.* of milk, to be forwarded to the analyst under s.3, Sale of Food and Drugs Act Amendment Act 1879 (c. 30), did not need to be all the sample procured by the inspector (*Rolfe v. Thompson* [1892] 2 Q.B. 196); and, when a sample was procured under that section, the inspector did not need to deliver a third of it to the seller under s.14, Sale of Food and Drugs Act 1875 (c. 63) (*Rouch v. Hall* 6 Q.B.D. 17). See ARTICLE DEMANDED; PREJUDICE OF PURCHASER.

(7) Each of the three parts of the sample must be sufficient in quantity to afford reasonable facilities for analysis (*Lowery v. Hallard* [1906] 1 K.B. 398). As to fastening up the sample, see *Pearks v. Ward* [1902] 2 K.B. 1; *Winterbottom v. Allwood* [1915] 2 K.B. 608. When a part of the sample is, under s.22, Sale of Food and Drugs Act 1875 (c. 63), sent to the Commissioners of Inland Revenue for analysis, the production of it (and, probably, the Commissioners’ certificate) is a condition precedent to a conviction under s.6 (*Hutchinson v. Stevenson* 39 Sc. L.R. 789); but this case was not followed in *Suckling v. Parker* [1906] 1 K.B. 627.

(8) (Food and Drugs Act 1938 (c. 56), s.80(1)(a)). A sanitary officer taking a bottle of milk from a customer of a dairy was not acting as a sampling officer taking a sample (*Leach v. United Dairies* [1949] 1 All E.R. 1023).

(9) “Sample” (Food and Drugs Act 1955 (c. 16), s.93(1)). Can six meat pies constitute a “sample”? (*Skeate v. Moore* [1972] 1 W.L.R. 110). A substance is a “sample” for the purposes of s.93(1) if picked out indiscriminately from among similar substances with the object of making a random test. The quantity does not determine the issue (*Grimsby Borough Council v. Louis C. Edwards & Sons (Manufacturing)* [1976] Crim. L.R. 512).

SANCTION. (1) “Sanction” not only means prior approval; generally, it also means ratification (*Re De La Warr*, 16 Ch. D. 587); this case was on s.17, Settled Estates Act 1877 (c. 18). (See Settled Land Act 1925 (c. 18), s.92, where the word is APPROVE.) See RATIFY. Cp. AUTHORISE. See also *Re Unite* 75 L.J. Ch. 163, cited SATISFACTION.

(2) “But when the court is to be asked to approve proceedings under the Settled Land Act 1882 (c. 38), it is not wise to defer the application till after the proceed-

ings have been taken”: (*per* Bowen L.J., in *Re Beddoes* [1893] 1 Ch. 562; *Re Yorke* [1911] 1 Ch. 370). See s.92 of 1925 Act (c. 18).

(3) But the regulation, Bankruptcy Rules 1886, r. 317, that no member of a committee of inspection should derive profit from any transaction in the bankruptcy “except under and with the sanction of the court,” meant that the sanction had to be obtained before the transaction was commenced (*Re Gallard* [1896] 1 Q.B. 68; *cp.* now Bankruptcy Rules 1952 (No. 2113), r. 350). *Cp.* CONSENT; PERMISSION. So, the “sanction” of the court or committee of inspection, under s.12(1)(4), Companies Winding-up Act 1890 (c. 63)—see s.245, Companies Act 1948 (c. 38)—had, as a rule, to be obtained beforehand (*Re London Metallurgical Co.* [1897] 2 Ch. 262).

(4) “Sanction” by liquidator, of a transfer of shares (s.131, Companies Act 1862 (c. 89)) “means approval; and implies a power of disapproval” (*per* Lindley L.J., *Re National Bank of Wales* 66 L.J. Ch. 225, cited SHARE). See now Companies Act 1948 (c. 38), s.282.

(5) Sanction of water supply by Local Government Board: see *Soothill v. Wakefield* [1905] 2 Ch. 516.

SANCTUARY. Sanctuary was “a privileged place by the prince for the safeguard of mens lives which are offenders, being founded upon the law of mercie, and upon the great reverence, honour, and devotion which the prince beareth to the place whereunto hee granteth such a privileged” (*Termes de la Ley*; see further Cowel; Jacob; 4 Bl. Com. 332, 365, 436). But “no sanctuary, or privilege of sanctuary, shall be hereafter admitted or allowed in any case” (s.7 (21 Jac. 1, c. 28)), an Act repealed by Statute Law Revision Act 1863 (c. 125), without reviving this privilege (see s.1).

SANITARY. (1) “Any general Act relating to water works, or any Act for improving the sanitary condition of towns and populous districts” (s.93, Waterworks Consolidation Act 1847 (c. 17)) was not restricted to a sanitary Act relating to the conduct of water works; the phrase had to receive its plain and literal interpretation as indicating an Act for the public welfare and for the health of the community, *e.g.* the Public Health (Building in Streets) Act 1888 (c. 52) (*Grand Junction Waterworks Co. v. Hampton* 67 L.J.Q.B. 903).

(2) A “sanitary convenience” under the Public Health Acts involves proper entrances and exits and also approaches; the power of a local authority to make these enables it to make the approaches of such a size and character as to be a subway for foot passengers, if that be done in good faith and in the due exercise of its powers (*Westminster v. London & North Western Railway* [1905] A.C. 426). See further VEST.

(3) What was a “sufficient and suitable” sanitary convenience for a factory had to be determined by the Home Secretary (s.9(2), Factory and Workshop Act 1901 (c. 22)), except as to the County of London, or “any place where s.22, Public Health Act 1890 (c. 59), is in force” (subs.(4), *ibid.*). What the urban authority (or district council), under that latter section, “requires” to be done, was in the nature of a judgment, order, or determination, and was only appealable under s.7; and when the authority did not move after notice from the inspector, he “may take the *like* proceedings for punishing or remedying” the act, neglect, or default, specified in his notice (s.5(3), Factory and Workshop Act 1901, *sup.*); the requirements of such notice were only appealable under s.7, Public Health Act 1890, *sup.* (*Tracey v. Pretty* [1901] 1 K.B. 444; see further same case, cited NOTICE).

SANS RECOURS. (1) An indorsement of a bill of exchange or promissory note (see endorse), with the added words “sans recours,” or “without recourse to me,” exonerates the indorser from responsibility (Byles (16th ed.), 181); so, in the United States, of “at the indorsee’s own risk” (*Rice v. Stearns* 3 Mass. 225; *Mott v. Hicks* 1 Cowen, 512; Byles (6th American ed.), 242). But it transfers the indorser’s own interest in the document (*per Patteson J., Morris v. Walker* 15 Q.B. 598).

(2) An indorsement of a bill of lading directing the shipowner to deliver to the indorsee, “looking to him for all freight, without recourse to us,” exonerates the indorser from liability to freight, if it be proved that the shipowner accepted the indorsement; but such proof is not furnished by merely proving that the indorsement was on the bill when that document was handed to the master; it must be proved that he saw and accepted the indorsement (*Lewis v. McKee* L.R. 2 Ex. 37; 4 *ibid.* 58).

SATISFACTION. (1) “*Nota*, ‘in satisfaction’ and ‘in full satisfaction’ is all one” (Co. Litt. 213 a). See further ACCORD; GREE; FOR.

(2) A deed acknowledging a payment “in full satisfaction” (or, *semble*, “in satisfaction”) of rights, may amount to a release, and if those rights relate to property, it may amount to a “conveyance on sale” (*Garnett v. Inland Revenue Commissioners* 81 L.T. 633, cited RELEASE).

(3) “In satisfaction of his claim”: “there is no ambiguity about these words; they are equivalent to ‘in extinction,’ ‘in discharge,’ ‘in payment,’ as the case may be” (*per Lord Adam Purnell v. Shannon* 32 Sc. L.R. 47). See FULL DISCHARGE.

(4) “In lieu and full satisfaction of all claims”: see *Re Proctor* 42 Sc. L.R. 566, cited ALL.

(5) “Satisfaction” to be made for taking the surface of land, *e.g.* for a canal, includes an obligation to make compensation for the subjacent minerals which must be left for support (*London & North Western Railway v. Evans* [1893] 1 Ch. 16); on which see *Clippens Oil Co. v. Edinburgh Water Trustees* [1904] A.C. 64. See SOIL.

(6) “Satisfaction for all damage” (s.16, Railways Clauses Consolidation Act 1845 (c. 20)): see *Re Gower’s Walk Schools v. London Tilbury & Southend Railway* 24 Q.B.D. 326, on which case see *Horton v. Colwyn Bay* [1908] 1 K.B. 327, cited INJURIOUSLY AFFECTED. “Compensation for any damage”: see *Colac v. Summerfield* [1893] A.C. 187. See further *St. James Electric Light Co. v. The King* 73 L.J.K.B. 518; COMPULSORY POWERS.

(7) “Making or tendering satisfaction” for damage done in the exercise of statutory powers, does not imply a condition precedent to the right of entry; but means that the act shall not be done without compensation being made (*Lister v. Lobley or Hoxley* 6 L.J.K.B. 200; *Bentley v. Manchester, Sheffield & Lincolnshire Railway* [1893] 3 Ch. 222).

(8) “Indemnity or satisfaction,” for injury to a person, Art. 1056, Civil Code of Quebec: see *Miller v. Grand Trunk Railway* [1906] A.C. 187, over-ruling *R. v. Grenier* 30 Can. S.C.R. 42.

(9) To “make satisfaction” to a creditor (s.36, Judgments Act 1838 (c. 110)) was to pay his debt (*Hitching or Kitching v. Croft* 10 L.J.Q.B. 18); in scarcely any connection could the term also connote that the debtor was to obtain the goodwill and pleasure of his creditor (*Eagleton v. East India Co.* 3 B. & P. 55).

(10) “When a testator gives a direction that a particular thing shall be taken by any one ‘in or towards satisfaction’ of his share, and the thing spoken of exists and belongs to the testator, I cannot doubt that, according to the plain and obvious meaning, he gives that thing; and this plain meaning is not controlled or varied, but

rather corroborated, by adding such words as 'and shall be brought into hotchpot and accounted for accordingly' " (*per* Rigby L.J., *Re Cosier* [1897] 1 Ch. 325; but see same case in H.L. nom. *Wheeler v. Humphreys* [1898] A.C. 506).

(11) As to the doctrine of satisfaction of legacies, see ADEMPMENT; White & Tudor, Theobald; *Re Rattenbury* [1906] 1 Ch. 667, and cases there cited; PORTION. See also DONATIO MORTIS CAUSA.

(12) As to satisfaction of a covenant in a marriage settlement to pay a sum of money to the trustees, see *Re Cartwright* [1903] 2 Ch. 306; *Re Blundell* [1906] 2 Ch. 222; *Re Vernon* 95 L.T. 48.

(13) When a street had been in the possession of a local authority for a considerable time and they had done nothing, it had to be assumed that it was sewered to their "satisfaction" (s.150, Public Health Act 1875 (c. 55)), "although, as a matter of fact, they have not come to such a determination at all" (*per* Kekewich J., *Handsworth v. Derrington* [1897] 2 Ch. 438, cited SEWERED, stating effect of judgment of Esher M.R., *Bonella v. Twickenham* 20 Q.B.D. 63; see further *Rishton v. Haslingden* [1898] 1 Q.B. 294; cited STREET, and consider *Simmonds v. Fulham* [1900] 2 Q.B. 188, wherein *Bonella v. Twickenham* was distinguished). See also *St. Giles, Camberwell v. Hunt* 56 L.J.M.C. 65; *Wandsworth v. Golds* 80 L.J.K.B. 126, cited PAVE; *Bristol Corporation v. Sinnott* [1918] 1 Ch. 62. In *Handsworth v. Derrington* the sewerage was held not to have been done to such "satisfaction." See further FRONTING. See also *Wilmslow v. Sidebottom* 70 J.P. 537; *Harrison v. New Street Mews* [1906] 1 K.B. 703, cited FRONTING; *Sunderland Corporation v. Gray* [1928] Ch. 756.

(14) Where a thing is to be done "to the satisfaction" of A, that does not mean that his prior sanction must be obtained, and if he honestly considers that what has been done meets his approval, then it is to his "satisfaction" (*Re Unite* 75 L.J. Ch. 163, cited DIRECTION).

(15) A thing to be done if it appear "to the satisfaction of" the judge that it ought to be done, does not exempt his ruling from being reviewed (*Beaufort v. Crawshay* L.R. 1 C.P. 699, cited PERMANENT).

(16) "By way of satisfaction," in s.20, Gasworks Clauses Act 1847 (c. 15): see *Birmingham Corporation v. Allsopp & Sons Ltd.* 88 L.J.K.B. 549. Cp. now Gas Act 1948 (c. 67), Sched. 3, para. 29.

See SATISFACTORY; SACRIFICE.

SATISFACTORILY. Where a certificate is to show that "work has been satisfactorily carried out" it does not have to show that the amount, or value of the material and labour used is satisfactory (*Compania Panamena Europea Navegacion v. Frederick Leyland & Co.* [1947] A.C. 428).

SATISFACTORILY SOLD. See CAUTION.

SATISFACTORY. (1) Where one party has to perform a contractual obligation to the "satisfaction" of the other, e.g. furnish "proof satisfactory" of death or accident, this does not give the other the power to act capriciously—he can only ask for a reasonable fulfilment of the obligation (*Braunstein v. Accidental Insurance* 31 L.J.Q.B. 17; but see, as regards a works contract, *Stadhard v. Lee* 32 L.J.Q.B. 75). So, a condition to furnish a title "satisfactory" to the purchasers, only entitles him to make usual objections (*Lord v. Stephens* 1 Y. & C. Ex. 222). So, services or conduct to the "satisfaction" of an employer means, such as ought reasonably to satisfy

him, of which the jury are to judge (*per* Esher M.R., *Petty v. Ophir Concessions*, *The Times*, December 17, 1890).

(2) “Satisfactory evidence” (s.64, Tithe Act 1836 (c. 71)), though under this section a sealed copy of a tithe commutation map was “satisfactory evidence” of its accuracy, that was only so for the purposes of the Act, and not on questions of ownership (*Wilberforce v. Hearfield* 5 Ch. D. 709). See SUFFICIENT EVIDENCE.

(3) “Satisfactory ground” (s.1(3), Increase of Rent and Mortgage Interest (War Restrictions) Act 1915 (c. 97)), which authorised the court to make an order for possession “on some other ground which may be satisfactory to the court”: see *Harcourt v. Lowe* 35 T.L.R. 255; *Artizans’ Dwellings Co. v. Whittaker* [1919] 2 K.B. 301; *Price v. Pritchard* 35 T.L.R. 672; *Green-Price v. Webb* 89 L.J.K.B. 216; *Hunt v. Bliss* 89 L.J.K.B. 174.

(4) Satisfactory proof, as regards a life policy: see *Moore v. Woolsey* 24 L.J.Q.B. 40. See further PROVE.

(5) “Satisfactory reasons” for not manufacturing a patented article in the United Kingdom, under s.27(2), Patents and Designs Act 1907 (c. 29): see *Re Hatsch’s Patents* [1909] 2 Ch. 68, cited PATENT.

(6) “Satisfactory undertaking” (Divorce Reform Act 1969 (c. 55), s.6(3)(b)). An undertaking by a petitioner to make “such financial provision” for the wife “as the court may approve” was not a “satisfactory undertaking” within the meaning of this section, because it failed to give any specific proposals even in outline (*Grigson v. Grigson* [1974] 1 W.L.R. 228).

As to an architect’s certificate of satisfactoriness: see CERTIFICATE.

SATISFY; SATISFIED. (1) “I desire it to be understood as my clear opinion that a term does not become “satisfied” within the Satisfied Terms Act 1845 (c. 112), unless the beneficial interest in the charge secured by the term, the beneficial interest in the whole charge, and the beneficial interest in the whole estate, are united and merged in one person” (*per* James L.J., *Anderson v. Pignet* 8 Ch. 180; see also cases there cited, and *Shaw v. Johnson* 30 L.J. Ch. 646).

(2) To be “satisfied” with a state of things, means to be honestly satisfied in your own mind; it does not, by itself, mean that reasonable care is to be taken to make inquiries before being satisfied, *e.g.* a constable acted properly if he was, in his own mind, honestly “satisfied that it is necessary for the public safety or the welfare of an alleged lunatic” to remove the latter to a workhouse under s.20, Lunacy Act 1890 (c. 5), as substituted by National Health Service Act 1946 (c. 81), Sched. 9, Pt. 1 (*Harward v. Frost* 14 L.T.R. 306). See *Jones v. Robson* [1901] 1 K.B. 673, cited LIKELY. For the meaning of “satisfied” in s.16, Lunacy Act 1890 (c. 5), see *Everett v. Griffiths* [1920] 3 K.B. 163, affirmed [1921] 1 A.C. 632; see also *Harward v. Hackney Union* 14 T.L.R. 306.

(3) (Housing Act 1930 (c. 39), s.17; Housing Act 1936 (c. 51), s.9) meant *prima facie* satisfied (*Fletcher v. Ilkeston Corporation* 96 J.P. 7).

(4) “Satisfied his contempt” (Ecclesiastical Courts Act 1813 (c. 127)): see *Dean v. Green* 8 P.D. 79; *Ex p. Bell Cox* 20 Q.B.D. 1; *nom. Cox v. Hakes* 15 App. Ca. 506.

(5) (Town and Country Planning Act 1944 (c. 47), s.1) The court could not examine the Minister’s decision that he “is satisfied” that an order was requisite for dealing satisfactorily with extensive war damage on the ground that the phrase meant “satisfied on reasonable grounds” (*Robinson v. Minister of Town and Country Planning* [1947] K.B. 702). See also REASONABLE; REASONABLE CAUSE, REASONABLE GROUND.

(6) (Bankruptcy Act 1914 (c. 59), s.42(2)). A claim is not satisfied until paid in full with statutory interest (*Re A Debtor* (No. 707 of 1939) [1947] Ch. 313).

(7) "Is satisfied" (Matrimonial Causes Act 1950 (c. 25), s.4), meant satisfied beyond reasonable doubt (*Preston-Jones v. Preston-Jones* [1951] A.C. 391; *Galler v. Galler* [1954] P. 252). The words did not import a criminal standard of proof. They merely meant "makes up its mind" (*Blyth v. Blyth* [1966] A.C. 643).

(8) "Satisfied" (Judgments Act 1838 (c. 100), s.17). Where money paid into court was ordered to be paid out to the plaintiff in satisfaction of the judgment debt the debt was not thereby "satisfied" within the meaning of this section. This did not occur until the money was actually paid (*Parsons v. Mather & Platt* [1977] 1 W.L.R. 855).

(9) "Satisfy themselves" (Television Act 1964 (c. 21), s.3(1)). For a consideration of whether or not the Independent Broadcasting Authority had done enough to "satisfy themselves" for the purposes of this section, see *A.-G. ex rel. McWhirter v. I.B.A.* [1973] 1 Q.B. 629.

Execution "withdrawn, satisfied, or stopped": see WITHDRAWN.

SAVAGE ANIMAL. See ANIMAL.

SAVE. (1) A bequest of a fund to trustees upon trust to pay the annual income to testator's wife for life, with a direction that "all moneys which shall be saved" thereout by the trustees and wife shall go to A, has no application as regards income actually paid to the wife, but applies to income in the trustees' hands at the wife's death which she has allowed to remain in their hands, *i.e. semble*, which she has not demanded (*Wood v. Menzies* 9 Macph. 775).

(2) "Save and except": see *Savill v. Bethell* [1902] 2 Ch. 538, cited EXCEPTION; RESERVING.

"Can save": see LEFT.

Despatch money for time "saved": see DESPATCH.

SAVINGS. (1) "Savings" of income trust funds, may well bear the sense of something in the hands of the trustees not paid over; and includes a proportionate part of an annuity for the time being between the last payment and the death of the annuitant (*Re Rosenthal* 6 W.R. 139).

(2) Wife's savings: see *Finlay v. Darling* [1897] 1 Ch. 719, cited ENTITLED; *Askew v. Rooth* L.R. 17 Eq. 426, cited PURCHASED. See further *Re Dunbar* 42 Sc. L.R. 555, cited CONQUEST; *Re Mackenzie* [1911] 1 Ch. 578.

(3) A wife's savings out of housekeeping moneys supplied by her husband belong to the husband: see *Birkett v. Birkett* 98 L.T. 540; see also *Hoddinott v. Hoddinott* [1949] 2 K.B. 406.

(4) "Savings, provisoes, and indemnities" (Treason Act 1765 (c. 53)): see *Miller v. Salomons* 7 Ex. 475, on appeal *Salomons v. Miller* 8 Ex. 778.

"Savings certificates." Stat. Def., Capital Gains Tax Act 1979 (c. 14), s.71.

SAWCES. See SALICETUM.

SAY. (1) "Say about": "In *M'Connel v. Murphy* (L.R. 5 P.C. 203), where the sale was 'of all the spars manufactured by A, say about 600,' the words 'say about 600' were held to be words of expectation and estimate only, not amounting to an understanding that the quantity should be 600. The effect of the word 'say' when prefixed to the word 'about' was considered as emphatically marking the vendor's

purpose to guard himself against being supposed to have made any absolute promise as to quantity" (Benj. (8th ed.) 707; see also Black. (2nd ed.) 216). But in a charterparty a contract to deliver "a full and complete cargo . . . say about" a specified quantity, the words "say about" would bear a different meaning from what they would in an ordinary contract, and would not be mere words of expectation, but are words of limitation and therefore contract (*Morris v. Levison* 1 C.P.C. 155; see Abbott 241; Blackb. 216.).

(2) "Say from": in a contract for sale "say from 1,000 to 1,200 gallons," these are words of expectation (*Gwillim v. Daniel* 4 L.J. Ex. 174). But in *Tanvaco v. Lucas* (28 L.J.Q.B. 150, 301), a contract for "about 2,000 quarters, say from 1,800 to 2,200 quarters," was, in view of its other stipulations, construed as fixing a minimum and maximum limit.

(3) "Say, not less than": in a contract for sale of wool, "say not less than 100 packs," these are not mere words of expectation; but amount to a contract to deliver at least that quantity (*Leeming v. Snaith* 16 Q.B. 275; see also *Bourne v. Seymour* 24 L.J.C.P. 202; NOT LESS).

(4) If against the total of the items of a solicitor's bill he adds "say" a lesser sum than the total, yet still it is that total which is the amount of the bill as regards the costs of its taxation (*Re Carthew* 54 L.J. Ch. 134).

See further, as to the use of the word "say," *Philips v. Astling* 2 Taunt. 211. See MORE OR LESS; THEREABOUTS.

SCAFFOLDING. (1) Building, exceeding 30 feet in height, "constructed or repaired by means of a scaffolding" (s.7(1), Workmen's Compensation Act 1897 (c. 37)), was a phrase exactly copied from s.23(2), Factory and Workshop Act 1895 (c. 36) and which appeared in a slightly different form in the Schedule to Notice of Accidents Act 1894 (c. 28). Under the firstly mentioned Act it occasioned much difficulty. Probably, whether any particular building arrangement is a "scaffolding" or not, is a mixed question of law and fact; the inclination, probably, being to support the conclusion reached at the trial (*Hoddinott v. Newton* [1901] A.C. 49; *Ferguson v. Green* [1901] 1 Q.B. 25).

(2) "The ordinary meaning of the word 'scaffolding' is a structure used outside or inside a building, and made to enable a workman to construct or repair the building" (*per Mathew L.J., Elvin v. Woodward* [1903] 1 K.B. 838), in which case the use of an ordinary pair of painter's steps to enable a workman to paint a wall above the height he could reach from the ground might justify a finding that they were a scaffolding; even a ladder may be a scaffolding if its real purpose is the same as that of scaffolding (*O'Brien v. Dobbie* [1905] 1 K.B. 346). See further *Sellars v. Campbell* 40 Sc. L.R. 643; but see *M'Donald v. Hobbs* 2 Fraser 3.

(3) It is clear that a "scaffolding" may be inside as well as outside a building (*Hoddinott v. Newton* sup.), and in *Maude v. Brook* [1900] 1 Q.B. 575, Smith and Rigby L.JJ., held that the construction extends to the inside of a room in a building; but it is submitted that the preferable opinion was given by Collins L.J., when, in the same case, he said, "in my opinion the scaffolding contemplated by the statue is one system of scaffolding for the whole building by means of which it is being constructed or repaired."

(4) A ladder placed outside a building, one end of a plank being tied to one of its rungs, is not a "scaffolding" (*Wood v. Walsh* [1899] 1 Q.B. 1009, cited REPAIR); but planks and trestles may be a "scaffolding" (*Hoddinott v. Newton* sup.), and in *Maude v. Brook* (sup.) the majority of the court held that trestles with loose planks laid across to enable the workman to plaster the ceiling of a room 9 feet high,

formed a "scaffolding"! But see the judgment of Collins L.J. See further *Veazey v. Chattle* [1902] 1 K.B. 494; *Marshall v. Rudeforth* [1902] 2 K.B. 175; PLANT. See also *Crowther v. West Riding Window Cleaning Co.* [1904] 1 K.B. 232; *Fletcher v. Hawley* 21 T.L.R. 191.

(5) "Scaffold" (Building (Safety, Health and Welfare) Regulations 1948 (No. 1145), Regs. 3, 5) may include:

(a) Youngman's staging, when laid on a roof for the purpose of workmen getting to their work (*Conolly v. McGee* [1961] 1 W.L.R. 811; Construction (Working Places) Regulations 1966 (No. 94), regs. 3(1)(a), 4(2)).

(b) Planks on trestles put up for the purpose of painting the roof of a railway station (*Maloney v. A. Cameron* [1961] 1 W.L.R. 1087; *sub. nom. Moloney v. A. Cameron* [1961] 2 All E.R. 934).

(c) A single plank joining the top of three steps to the ground, used as a gangway (*Conlan v. Glasgow Corporation* 1964, S.L.T. (Notes) 42).

(d) Planks placed on a roof some two feet below the rim of the one on which the man was working (*Harris v. Brights Asphalt Contractors* [1953] 1 Q.B. 617).

(e) An improvised plank bridge across a shallow trench (*Byers v. Head Wrightson & Co.* [1961] 1 W.L.R. 961).

(f) An unsafe board between a scaffold and a stack of bricks (*Taylor v. Sayers* [1971] 1 W.L.R. 561).

(g) A single plank laid over concrete steps (*Conlan v. Glasgow Corporation* 1964 S.L.T. 134).

But cannot include a permanent structure, part of a building which is being built (*Curran v. Neil (William) & Son* [1961] 1 W.L.R. 1069).

"Scaffold," "ladder scaffold," "suspended scaffold," "trestle scaffold." Stat. Def., Building (Safety, Health and Welfare) Regulations 1948 (S.I. No. 1145), reg. 3(2).

SCALE. "Solicitor's scale fee": see CONVEYANCE; DEDUCE; PREPARE.

"Scales." Stat. Def., Customs and Excise Act 1952 (c. 44), s.303.

SCANDALOUS. (1) A pleading is "scandalous" (R.S.C., Ord. 19, r. 27, now Ord. 18, r. 19) which alleges anything unbecoming the dignity of the court to hear, or is contrary to good manners, or which charges a crime immaterial to the issue. But the statement of a scandalous fact that is material to the issue is not a scandalous pleading (*Millington v. Loring* 6 Q.B.D. 190; *Christie v. Christie* 8 Ch. 499; see also *Re R.* [1951] P. 10).

(2) For examples of scandalous pleading: see *Blake v. Albion Assurance* 45 L.J.C.P. 663; *Lee v. Ashwin* 1 T.L.R. 291; *Coyle v. Cuming* 27 W.R. 529; *Duncan v. Vereker* [1876] W.N. 64; *Bright v. Marner* [1878] W.N. 211. Cp. FRIVOLOUS OR VEXATIOUS.

(3) "Immorality or scandalous conduct detrimental to the partnership business": see *Barnes v. Young* [1898] 1 Ch. 414, cited SUFFICIENT. See also REASON; FLAGRANT.

SCENE. Representation of "any scene or object" (s.2, Fine Arts Copyright Act 1862 (c. 68)): see *Hanfstaengl v. Empire Palace* 63 L.J. Ch. 455.

SCHEDULE. See INVENTORY; TERRIER.

As to when a schedule is restrictive, see SET FORTH.

SCHEME. (1) "Scheme of arrangement of his affairs": see Bankruptcy Act 1890 (c. 71), ss.3, 6; Bankruptcy Act 1914 (c. 59), s.16. Cp. "deed of arrangement," under DEED; CESSION. As to the sanction of scheme of arrangement by the court, see *Re Pilling* [1903] 2 K.B. 50, distinguishing *Re E. A. B.* [1902] 1 K.B. 457, and disapproving observations on this last case in *Re Baines* 86 L.T. 691; *Re Flew* [1905] 1 K.B. 278, cited SECURITY. See further DEBT.

(2) Scheme of arrangement as regards companies: see Companies Act 1948 (c. 38), ss.206–208.

(3) "A scheme or contract involving the transfer of shares" (Companies Act 1948 (c. 38), s.209(1)) includes one involving the transfer of an absolute right to an allotment of shares (*Re Simo Securities Trust* [1971] 1 W.L.R. 1455).

(4) Scheme for reduction of capital: see CAPITAL. See Companies Act 1948 (c. 38), s.66 *et seq.*

(5) "Scheme for the reconstruction of a Company" (Finance Act 1927 (c. 10), s.55(1)). For a "scheme" of reconstruction to satisfy this section the business and the persons interested had substantially to be the same (*Brooklands Selanger Holdings v. I.R.C.* [1970] 1 W.L.R. 429).

(6) "A scheme legally established" (s.29, Charitable Trusts Amendment Act 1855 (c. 124)) meant a document, sanctioned by some properly constituted authority, containing directions for the administration of a charity; and did not include the instrument of foundation of the charity (*Re Mason's Orphanage* [1896] 1 Ch. 54). See further *A.-G. v. National Epileptic Hospital* [1904] 2 Ch. 252. See *Dick v. Audsley* [1908] A.C. 347, cited SELECT.

(7) A "scheme of compensation" duly provided in accordance with s.3, Workmen's Compensation Act 1897 (c. 37), and accepted by a workman, precluded him from any remedy against his employer in respect of an accident in or about his employment (*Taylor v. Hamstead Colliery Co.* [1904] 1 K.B. 838). "The workman who comes under the provisions of the scheme binds himself by contract to accept the scheme as substituted for the provisions of the Act, is in the same position (and those claiming through him are in the same position) as if he or they had availed themselves of the provisions of the Act and claimed compensation under it; in which case neither he nor they could have subsequently availed themselves of any other remedy, either at common law or by statute, prior to the Act of 1897. This is, I think, the result of the provision of s.3(1), that when an employer has contracted with a workman that the provision of the scheme, within the meaning of the section, shall be substituted for the provisions of the Act, 'thereupon the employer shall be liable only in accordance with the scheme' " (*per* Romer L.J., *ibid.*). Cp. OPTION. See hereon Workmen's Compensation Act 1906 (c. 58), s.3, Sched. I, s.21; a workman who had come under a scheme in accordance with that section, "is outside the provisions of the Act altogether" (*per* Cozens-Hardy M.R. in *Horn v. Admiralty Commissioners* [1911] 1 K.B. 24); *Haworth v. Knowles*, 29 T.L.R. 667; see also *Mulholland v. Whitehaven Colliery Co.* [1910] 2 K.B. 287, cited COMMITTEE.

(8) Scheme of an education committee: see ss.4–6 and 11–16, Education Act 1921 (c. 51); by s.17 of 1902 Act (c. 19), the committee was to be "established" with a "scheme," which "shall have effect as if enacted in this Act," but might be "revoked or altered" by another authorised scheme (s.21(3) of 1902 Act, *sup.*); therefore, where a subsisting scheme gave a council power to "determine" the order in which its committee should retire, which power the council exercised; held, that it was *functus officio* and could not vary that determination by a subsequent resolution (*Milward v. Barry Urban Council* [1904] 2 Ch. 481).

(9) "Scheme of reconstruction or improvement," under s.13(1), Increase of Rent and Mortgage Interest (Restrictions) Act 1920 (c. 17), meant some public scheme, as, for example, the widening of a road, or destroying of a rookery: see *Mitchell v. Townsend* [1921] 2 K.B. 91.

(10) "A scheme," within s.79 of the Transport Act 1947 (c. 49), might have been constituted by a pre-existing scheme which had been altered (*British Transport Commission v. London County Council* [1953] 1 Q.B. 736).

(11) A "scheme regulating the marketing of an agricultural product" within the Agricultural Marketing Acts 1931–48 is a scheme which introduces some orderly system of marketing that product, and, while a scheme might confer some discretionary powers on a board, one which is discretionary from start to finish cannot be a "scheme" under these Acts (*Tuker v. Ministry of Agriculture* [1960] 1 W.L.R. 819).

SCHISM. They are guilty of schism who "separate themselves from the communion of saints, as it is approved by the Apostles' rules in the Church of England, and combine themselves together in a new brotherhood; accounting the Christians who are conformable to the doctrine government rites and ceremonies of the Church of England to be profane, and unmeet for them to join with in Christian profession" (9th, Canons Ecc. 1604).

SCHIZOPHRENIA. A modern term for *dementia praecox*, i.e. defect of mind existing from an early age (*R. v. Rivett* 34 Cr. App. R. 87).

SCHOFIELD'S ACT. Parliamentary Costs Act 1865 (c. 27).

SCHOLAR. (1) To say of a physician "thou wert never scholar, and art not worthy to speak to a scholar" is slander *per se*, although it be urged that "a physician may be no good scholar and yet a good physician" (*Cawdry v. Highley* Cro. Car. 270, cited *Fool*).

(2) "A point was made on behalf of the school board that, as the word 'scholar' was used, the education in a board school was not confined to children. I do not agree; for the word 'scholar' and the word 'child' will be found indiscriminately used both in the Education Acts and in the Codes" (*per Smith M.R.*, *R. v. Cockerton* [1901] 1 K.B. 731, 732). See **ELEMENTARY**.

SCHOLARSHIP. "Income arising from a scholarship" (Income Tax Act 1952 (c. 10), s.458; Income and Corporation Taxes Act 1970 (c. 10), s.375) did not cover a loan made to an employee to enable her to attend a Technical College (*Clayton v. Gothorp* [1971] 1 W.L.R. 999), but it did cover discretionary awards to the children of employees made, by the trustees of a fund set up by a company, to assist in meeting the costs of further education (*Wicks v. Firth* [1983] 2 W.L.R. 34).

Stat. Def., Universities and Colleges (Emergency Provisions) Act 1939 (2 & 3 Geo. 6, c. 106), s.7; Income and Corporation Taxes Act 1970 (c. 10), s.375(2); Finance Act 1983 (c. 28), s.20(4).

SCHOOL. (1) "School" (Education Act 1944 (c. 31), s.10). A school is an institution with a character of its own which can exist independently of the buildings in which it is housed from time to time (*Bradbury v. Enfield London B.C.* [1967] 1 W.L.R. 1311).

(2) A reference in a will to a school was held to refer to a Sunday-school (*Re Strickland's Will Trusts* [1936] 3 All E.R. 1027).

(3) "School bursary": see *McQuaker v. Ballantrae Educational Trust* 28 Sc. L.R. 377.

(4) "School of learning" (Charitable Gifts Act 1601 (c. 4)) included a school for the education of gentlemen's sons (*A.-G. v. Lonsdale* 1 Sim. 109; see also *A.-G. v. Nash* 3 Bro. C.C. 588).

(5) A covenant not to carry on on demised premises a "school or seminary" was held to refer to a school for the education of boys and girls, and not to a school of music (*Lawrence v. South County Freeholds, Ltd.* [1939] Ch. 656).

(6) For the construction of the words "schools and charitable institutions, and poor and other objects of charity, or any other public objects," in a will, see *Re Bennett* [1920] 1 Ch. 305.

(7) "Other schools": see *Re Stockport Schools* [1898] 2 Ch. 687, cited *OTHER*.

Stat. Def., Education Act 1944 (c. 31), s.114; Education Act 1980 (c. 20), s.34; Value Added Tax Act 1983 (c. 55), Sched. 6, Group 6; Public Health (Control of Diseases) Act 1984 (c. 22), s.74; Building Act 1984 (c. 55), s.126.

See CERTIFIED; CHARITY SCHOOL; DISCIPLINE; EDUCATION; ELEMENTARY; ENDOWED; FREE GRAMMAR SCHOOL; GRAMMAR SCHOOL; HOUSE; NON-VESTED NATIONAL SCHOOL; PARISH SCHOOL; PUBLIC ELEMENTARY SCHOOL; PUBLIC SCHOOL; RAGGED SCHOOL; RECOGNISED; SCIENCE; SUNDAY SCHOOL; TECHNICAL; VOLUNTARY SCHOOL.

SCHOOLMASTER. See MASTER; TUTOR.

SCIENCE. (1) "Science," in its general meaning, is not confined to pure or speculative science, but includes applied science (*per* Lord Macnaghten *Inland Revenue Commissioners v. Forrest* 15 App. Ca. 353, 354).

(2) Scientific Societies Act 1843 (c. 36), s.1, exempts from local rates premises "belonging to any society instituted for purposes of science, literature, or the fine arts, exclusively," if supported wholly or in part by annual voluntary contributions, and not making (and the rules of which expressly prohibit, *R. v. Jones* 8 Q.B. 719, inf.) any "dividend, gift, division, or bonus, in money," to its members; and which has obtained a certificate from the Registrar of Friendly Societies. "Science, literature, or the fine arts" includes the promotion and advancement of naval and military science and literature (*Westminster City Council v. Royal United Service Institution* [1938] 2 All E.R. 545).

(a) The following societies have been held exempt—

Royal Manchester Institution (*R. v. Manchester* 16 Q.B. 449); The Linnæan Society of London (*Linnæan Society v. St. Anne Westminster* 23 L.J.M.C. 148); The Royal Medical and Chirurgical Society of London (*R. v. Royal Medical and Chirurgical Society* 30 L.T.O.S. 133); The Birmingham New Library (*Churchwardens of Birmingham v. Shaw* 10 Q.B. 868); The Bradford Library and Literary Society (*Bradford Library Society v. Churchwardens of Bradford* 1 E. & E. 88); The Liverpool Library (*Liverpool Library v. Liverpool* 29 L.J.M.C. 221); The Royal College of Music (*Royal College of Music v. Westminster* [1898] 1 Q.B. 809); The Institute of Fuel (*Institute of Fuel v. Morley* [1956] A.C. 245); The Society of Chemical Industry (*Westminster City Council v. Society of Chemical Industry* (1956) 54 L.G.R. 496). But see, as to some of the foregoing, *Savoy v. Art Union* [1896] A.C. 296. The Hornsey School of Art is exempt from local rates (*Hornsey School of Art v. Edmonton* 94 L.T. 203, following *Royal College of Music v. Westminster* sup., and rejecting *Liverpool v. West Derby* 3 L.G.R. 647).

(b) The following societies have been held not exempt—

The Religious Tract Society (*R. v. Jones* 8 Q.B. 719, the precise ground of that decision was that the rules of the society did not expressly prohibit dividends to members; but Denman C.J., at the conclusion of his judgment, said, "Upon the words of this statute I greatly doubt whether, under the words 'literary societies,' a religious society can be included": see that dictum cited with approval, *Scott v. St. Martin-in-the-Fields* 25 L.J.M.C. 42); a society for the purposes of education (*R. v. Pocock* 8 Q.B. 729; *R. v. Temple* 22 L.J.M.C. 129); a society—e.g. The Russell Institution, or the Cambridge Philosophical Society—one of whose staple objects is to provide a news-room; for readers of the news of the day are not, whilst so employed, "cultivating science, literature, or the fine arts" (*Russell Institution v. St. Giles and St. George Bloomsbury* 23 L.J.M.C. 65; *Purchas v. Holy Sepulchre* 24 L.J.M.C. 9); a society whose primary object is the private convenience or amusement of its members (*R. v. Brandt* 16 Q.B. 462; *R. v. Gaskell* 16 Q.B. 472), or one of whose objects is to give to individuals the practical benefits of science (*Jenner Institute v. St. George's* 69 L.J.Q.B. 814; see further *R. v. Institution of Civil Engineers* 5 Q.B.D. 48, and *Re Royal College of Surgeons* [1899] 1 Q.B. 871, inf.); The Birmingham News Room (*R. v. Phillips* 8 Q.B. 745); The Greenwich Society for the Acquisition and Diffusion of Useful Knowledge (*Purvis v. Traill* 3 Ex. 344); The London Art Union (*Savoy v. Art Union* sup.); The London Library (*Clarendon v. St. James Westminster* 20 L.J.M.C. 213); The Royal Agricultural Society (*Royal Agricultural Society v. St. George Hanover Square* 39 S.J. 557); The United Service Institution (*R. v. St. Martin-in-the-Fields* 17 Q.B. 149); The Zoological Society (*R. v. Zoological Society* 23 L.J.M.C. 139); The Working Men's Educational Union, one of whose objects was the discussion of social and political subjects after the manner of a debating club (*Scott v. St. Martin-in-the-Fields* sup.); The Institute of Civil Engineers (for "science" ceases to be science, within the meaning of the exemption, when it is acquired, communicated, or made use of, for the advantage of an individual, or of the members of a particular profession or section of the public (*R. v. Institution of Civil Engineers* 5 Q.B.D. 48); in that case Field J., said, "no doubt it has been thought that the Court of Queen's Bench, in some of the earlier cases, carried the exemption at least to its furthest limits, but all the later cases are in favour of its stricter limitation"); The British Launderers' Research Association (its objects were not "exclusively" for the purposes of science (*British Launderers' Research Association v. Hendon Rating Authority* [1949] 1 K.B. 462)); The British Iron and Steel Association following that case (*Battersea Borough Council v. British Iron & Steel Association* [1949] 1 K.B. 434).

(3) One of the exemptions from property duty in s.11(3), Customs and Inland Revenue Act 1885 (c. 51), is for properly legally appropriated and applied "for the promotion of education, literature, science, or the fine arts." The word "exclusively" does not appear here; "but I apprehend that the meaning of this clause of exemption is that the property or income shall be, if not exclusively, yet certainly in the main and as its chief object, devoted to the promotion of education, literature, science, or the fine arts" (per Lord President, *Society of Writers to the Signet v. Inland Revenue Commissioners* 14 Sess. Ca. 4th Ser. 34); accordingly, it was there held that the property of the Society of Writers was not exempt. But though that rule of interpretation was adopted in *Re Institution of Civil Engineers* (19 Q.B.D. 610; 20 Q.B.D. 621, affirmed in H.L. nom. *Inland Revenue Commissioners v. Forrest* 15 App. Ca. 334), yet, on the facts, the majority of the Court of Appeal held that that institution was exempt from the property duty. And though in that case Coleridge C.J., and Field J. (in Q.B.D.), Lopes L.J. (in C.A.), and Halsbury C. (in H.L.), held that the absence of "exclusively" made no difference, yet as the judge

ment in the Q.B.D. was overruled and neither that of Lopes L.J., nor that of Halsbury C., was adopted, it would seem that the absence of that word did make some difference, and, to some extent, explains why the property of the Civil Engineers' Institution is not exempt from local rates, but is exempt from property duty. Without that explanation it seems difficult to reconcile the two cases; see hereon judgment of Kay L.J., *Art Union v. Savoy* [1894] 2 Q.B. 617.

(4) The holding of examinations with the view to granting professional qualifications, is not for "promotion of science"; therefore the property of the Royal College of Surgeons is not exempt under the section last considered, except as to such minor parts thereof, *e.g.* the museum, as can be shown to be for scientific purposes (*Re Royal College of Surgeons* [1899] 1 Q.B. 871; see further *Jenner Institute v. St. George's* sup.).

(5) "Practical sympathy in the pursuit of science": see *Weir v. Crum Brown* [1908] A.C. 162, cited PURSUIT.

See EDUCATION; JOINT STOCK COMPANY; SCIENTIFIC Cp. LITERARY.

SCIENTER. (1) "Scienter" is the prior knowledge of the quality or condition of a thing, *e.g.* in an action against the owner of a dog for damage caused by the dog biting mankind, you must prove the scienter, *i.e.* that the owner knew of his dog's propensity to bite mankind (*Osborn v. Chocqueel* [1896] 2 Q.B. 109); that proved, the owner of the dog is bound to keep it secure at his peril, even against an incitement of the animal by a third person: see *Baker v. Snell* [1908] 2 K.B. 825; see also *Glanville v. Sutton* 97 L.J.K.B. 166; see hereon Rosc. N.P. (20th ed.) 771. As regards such damage to cattle or sheep, the scienter was not necessary (Dogs Act 1865 (c. 60), s.1).

(2) In an action on an express warranty, scienter is immaterial and irrelevant, *e.g.* proof that the seller of goods knew that they were not according to warranty is not required (*Williamson v. Allison* 2 East, 446).

SCIENTIFIC. (1) "Scientific or local investigations" (Judicature Act 1925 (c. 49), s.89). A case does not require to be tried before a referee on the ground that it involves scientific investigation merely because technical questions are involved (*Osenton (Charles) & Co. v. Johnston* [1942] A.C. 130).

(2) "Scientific work" is of narrower import than "technical work" (*Battersea Borough Council v. British Iron & Steel Research Association* [1949] 1 K.B. 434).

"Scientific research." Stat. Def., Capital Allowances Act 1968 (c. 3), s.94; Income and Corporation Taxes Act 1970 (c. 10), s.362(3); Town and Country Planning Act 1971 (c. 78), s.66(3).

"Literary or scientific institution": see LITERARY.

"Scientific investigation": see PROLONGED EXAMINATION.

See SCIENCE.

SCOLD. " 'Scolds,' in a legal sense, are troublesome and angry women who, by their brawling and wrangling amongst their neighbours, break the public peace, increase discord, and become a public nuisance to the neighbourhood" (Jacob, adopted in *United States v. Royall* 3 Cranch, 622). See Tumbrell; see also 9 Shropshire Archaeological Society, 106 *et seq.*

SCOT. (1) Scot is "a customary contribution laid upon all subjects according to their ability" (Spelm. 505; see also Cowel). In *Waller v. Andrews* (7 L.J. Ex. 67), "scots," in a tenant's agreement to pay all outgoings, rates, taxes, scots, etc., was

treated as an extensive word, and was held to include an extraordinary assessment by the Commissioners of Sewers for work of permanent benefit (see hereon 2 Platt, 170). See **OUTGOING**.

(2) In *Termes de la Ley*, "scot" is not spoken of as a contribution or burden; the definition there given is "'scot,' that is to be quit of a certaine custome, as of common tallage made to the use of the sheriffe or bayliffe."

SCOT AND LOT. (1) Those who pay "scot and lot" are those who pay to church and poor (*per Hardwicke C., A.-G. v. Parker* 3 Atk. 557). Cp. **SCOT**; **LOT AND COPE**.

(2) But probably the primary meaning is to pay scot, *i.e.* one's portion of local taxation, and to bear lot, *i.e.* to serve in turn the local offices (see Creasy on the Constitution (3rd ed.), 271). "Bear" is, however, applied to both, as in the phrase "bearing neither scot, lot, nor other charges" (Cowell, *Scot*).

(3) See further, as to scot and lot boroughs, Hallam's Constitutional History (8th ed.), 40-47.

SCOTALE. "'Scotale' is an extortion prohibited by the statute of *Charta de Foresta*, c. 7, and it is where any officer of the forest keeps an ale-house, to the intent that he may have the custome of the inhabitants within the forrest to come and spend their money with him, and for that he shall winke at their offences committed within the forest" (*Termes de la Ley*; see further Cowell).

SCOTCH WHISKY. When whisky is sold as Scotch whisky, the representation that it is Scotch whisky carries the meaning that the entire contents of the container in which it is sold were distilled in Scotland (*Henderson & Turnbull v. Adair* 1939 S.C. (J.) 83).

Stat. Def., Finance Act 1969 (c. 32), Sched. 7, para. 1.

SCOUNDREL. See **CHEAT**.

SCRAP METAL. (1) "Scrap metal" (Scrap Metal Dealers Act 1964 (c. 69), s.9(2)) should be given the wider interpretation, *i.e.* inclusive of but not limited to the words which follow (*Jenkins v. Cohen (A.) & Co.* [1971] 1 W.L.R. 1280).

(2) A motor vehicle dismantler, who purchased old cars primarily for the purpose of dismantling them and selling the parts, was held not to be a "scrap metal dealer" within the meaning of ss.1, 9 of the Scrap Metal Dealers Act 1964 (c. 69) (*Such v. Gibbons* [1981] R.T.R. 126).

Stat. Def., Scrap Metal Dealers Act 1964 (c. 69), s.9(2).

SCRAP STEEL. As to what was scrap steel for purposes of being carried at a special rate by rail, see *Ward, Ltd. v. Midland Railway* [1917] 2 K.B. 278.

SCRIP. (1) Strictly speaking, the "scrip," or "scrip certificate," of a company, is a certificate, transferable by delivery, entitling its holder to become a shareholder or bondholder in respect of the shares or bonds therein mentioned.

(2) "In some companies nothing is required to convert scrip-holders into shareholders. Companies constituted on this principle are called scrip companies, and in them scrip and shares are synonymous Usually, however, a person entitled to scrip does not acquire the rights of an actual shareholder until his scrip certificates have been delivered up and exchanged for share certificates, nor until his name has

been inserted upon the company's register of shareholders" (Lindley Comp. (5th ed.) 66).

(3) It was said that "scrip" as regards companies under Companies Act 1862 (c. 89), had ceased "to exist, and has been abolished by the legislature" (*per* Turner L.J., *Elkington's Case* 2 Ch. 518); but see para. (4) *inf.* In its original sense, "scrip" was used in respect of foreign loans (*Goodwin v. Robarts* 1 App. Ca. 476), banking companies (*Rumball v. Metropolitan Bank* 2 Q.B.D. 194, followed in *Webb v. Alexandria Water Co.* 93 L.T. 339), and railway companies (*McIlwraith v. Dublin Trunk Railway* 7 Ch. 134), and those cases show that such scrip was NEGOTIABLE. The judgment in *Goodwin v. Robarts* (sup.) when in Exchequer Chamber (L.R. 10 Ex. 337), contains a review of history of the law as to negotiable instruments.

(4) "Scrip" is popularly used as meaning the certificate of actual shares in a company (*per* Turner L.J., *Elkington's Case* sup.).

(5) Receipt on scrip certificate: see *London & Westminster Bank v. Inland Revenue Commissioners* [1900] 1 Q.B. 166, cited RECEIPT.

SCRIVENER. (1) A "scrivener" is a person to whom money or other property is entrusted for the purpose of lending it out to others, at a profit payable to his principal, but also at a commission or bonus for himself whereby he seeks, wholly or in part, to gain his livelihood (*Harrison v. Harrison* 1 Esp. 555; *Lott v. Melville* 3 Sc. N.R. 346; *Ex p. Malkin*, 1 Rosc. 406; 2 Rosc. 27; *Hutchinson v. Gascoigne* Holt N.P. 507; *Ex p. Gem* 2 Mont. D. & D. 90; *per* Parke B., *Wilkinson v. Candlish* 5 Ex. 97; *Ex p. Dufaur* 20 L.J. Bank. 38). In *Adams v. Malkin* (3 Camp. 539, 540), Gibbs C.J., citing Boswell's Life of Johnson, said that Jack Ellis was the last of the separate profession of scriveners; and the reporter adds this note from the Life: "Johnson; loq. It is wonderful, sir, what is to be found in London. The most literary conversation that I ever enjoyed was at the table of Jack Ellis, a money scrivener, behind the Royal Exchange, with whom, at one period, I used to dine generally once a week."

(2) The business of a scrivener is not within the ordinary scope of the business of a solicitor (*Harman v. Johnson* 22 L.J.Q.B. 297). As to the position that a solicitor occupies as regards money entrusted to him for investment, see *Dooby v. Watson* 39 Ch. D. 183.

See CHEVISANCE.

SCULPTURE. "Matter of invention in sculpture" (s.1, Sculpture Copyright Act 1814 (c. 56)) included original casts of fruit, flowers, or leaves (*Caproni v. Alberti* 40 W.R. 235).

SCUTAGE. "'Escuage' is called in Latine 'scutagium,' that is, service of the shield" (Termes de la Ley, *Escuage*).

SCUTIGER. See ESQUIRE.

SEA. (1) "The sea is either that which lies within the body of a county, or without.

"The part of the sea which lies not within the body of a county, is called the main sea, or ocean: see HIGH SEAS.

"The narrow sea, adjoining to the coast of England, is part of the wast and demesnes and dominions of the King of England, whether it lie within the body of any county or not: see SEA COAST.

"This is abundantly proved by that learned treatise of Master Selden called *Mare Clausum*; and therefore I shall say nothing therein, but refer the reader thither" (Hale, *De Jure Maris*, ch. 4).

(2) The Thames at Woolwich was not "the sea" within s.1, Burial of Drowned Persons Act 1808 (c. 75) (*Woolwich v. Robertson* 6 Q.B.D. 654). In that case Mathew J. said, "'sea' is used, in this Act, in its ordinary and popular sense, and in that sense, 'sea' is always used as distinguished from 'river.'" Cp. CREEK.

(3) "By the sea": see *Lockhart v. National Lifeboat Institution* 40 Sc. L.R. 106, cited SEA SHORE. Cp. SEA BEACH.

(4) "At sea": see MARINER. See further *The Möwe* [1915] P. 1; AT SEA.

(5) There is no common law right, even for a sanitary authority, to discharge sewage into the sea (*Foster v. Warblington* [1906] 1 K.B. 648, cited OYSTER LAYINGS; *Hobart v. Southend-on-Sea* 75 L.J.K.B. 305). "The sea is subject to the free exercise by the public and every member of it, of the rights of fishing and navigation . . . the sea is a public highway; ships have the right eundi, redeundi, et morandi over every part of it, no matter to whom the soil lying thereunder may belong" (per Fletcher Moulton L.J., in *Denaby etc. Collieries v. Anson* [1911] 1 K.B. 171, cited DOCKYARD PORT; see also *Brinckman v. Matley* [1904] 2 Ch. 203; *Fitzhardinge v. Purcell* [1908] 2 Ch. 139).

Stat. Def., Sea Fisheries Regulation Act 1966 (c. 38), s.20; Prevention of Oil Pollution Act 1971 (c. 60), s.29; Water Act 1973 (c. 37), Sched. 3, para. 1 (3); Dumping at Sea Act 1974 (c. 20), s.12.

Ship "proceeding to sea": see PROCEED TO SEA.

See BEYOND SEAS; PERIL OF THE SEA; REALM.

SEA BIRD. See WILD BIRD.

SEA COAST. (1) "The coast is, properly, not the sea but the land which bounds the sea; it is the limit of the land jurisdiction, and of the parishes and manors (bordering on the sea) which are part of the land of the county. This limit, however, and its character, varies according to the state of the tide; when the tide is in and covers the land, it is sea; when the tide is out, it is land as far as low-water mark; between high and low water mark it must, therefore, be considered as *divisum imperium*" (per Sir J. Nicholl *R. v. Forty Nine Casks of Brandy* 3 Hagg. Adm. 275). See ENGLAND; FORESHORE; SHORE.

(2) As to the three miles from the coast over which the sea jurisdiction extends, see *R. v. Keyn* Ex. D. 63, and the numerous authorities therein cited; *R. v. Cunningham* Bell C.C. 72; TERRITORIAL WATERS. *R. v. Keyn* was reversed "in the very next session of Parliament" by the Territorial Waters Jurisdiction Act 1878 (c. 73), which affirmed "in the strongest terms that the decision which had been arrived at by the majority (a very narrow majority) in that case was one that was not the law of England; because the Act does not purport simply to alter the law, but it declares the law and says, in very plain terms, that that is, and always has been, the law of this country" (per Halsbury C., *Carr v. Francis* [1902] A.C. 181). The Crown, as the proprietor of the solum of the BED of the sea within the three miles limit, may make a grant of minerals therein to a subject (*Lord Advocate v. Wemyss* [1900] A.C. 48).

SEA FISH. "On looking at the Acts of Parliament, I find the terms 'floating fish' and 'shell fish' (River Dee Act 1698 (c. 24)), and that 'floating fish' is used in contradistinction to 'shell fish' (Oyster Fisheries Act 1790 (c. 51), s.2), and 'sea fish' synonymously with 'floating fish'" (per Ellenborough C.J., *Bridger v.*

Richardson 2 M. & S. 572); in that case the opinion of the court was (though a decision thereon was unnecessary) that "sea fish," in Fish Act 1605 (c. 12) meant floating fish, and did not include shell fish.

Stat. Def., Fisheries Act 1981 (c. 29), ss.14, 18; Agricultural Marketing Act 1983 (c. 3), s.8; British Fishing Boats Act 1983 (c. 8), s.9.

SEA FLOOD. Grant of land with "sea flood" as boundary; held, not to include the SEA SHORE (*Smart v. Dundee Magistrates* 3 Paton 606; *Todd v. Dunlop* 2 Robinson's Appeals 333; see further *Hunter v. Lord Advocate* 7 Macph. 899; see these cases stated by Lord Moncreiff in *Musselburgh Magistrates v. Musselburgh Real Estate Co.* 42 Sc. L.R. 247, cited SEA BEACH).

SEA-GOING. (1) A stevedore "is not, in any sense, a seaman or a sea-going person" (*per* Wills J., *R. v. City of London Court* 59 L.J.Q.B. 429, cited SEAMAN).

(2) A "sea-going" SHIP (s.109, Merchant Shipping Act 1854 (c. 104), ss.260, 261, Merchant Shipping Act 1894 (c. 60)) means a ship which goes to SEA, using that word in its widest meaning, and does not include a vessel plying upon, or in the estuary of, a river (*Salt Union Co. v. Wood* [1893] 1 Q.B. 370).

SEA GREENS. Sea greens are "grounds overflowed by the sea in spring tides" (Jacob). See hereon *Aitkens Trustees v. Caledonian Railway* 41 Sc. L.R. 352.

SEA GROUNDS. By the grant of "sea grounds," the soil, and not an easement merely, passes; "for, generally speaking, the soil passes by the word 'ground'; as by the word 'WOOD,' the soil in which the wood grows passes" (*per* Bayley J., *Scratton v. Brown* 4 B. & C. 496).

SEA INSURANCE. "Policy of sea insurance": see policy. See further TIME POLICY; MARINE. Cp. SHIP'S RISK. See *Re National Benefit Insurance Co. Ltd.* [1928] 1 Ch. 74, affirmed [1929] A.C. 114.

Stat. Def., Revenue Act 1884 (c. 62), s.8.

SEA RISK. See *Harrisons, Ltd. v. Shipping Controller* [1921] 1 K.B. 122.

SEA SHORE. (1) A boundary of lands "by the sea-shore"; held, to entitle the proprietor to the foreshore down to the sea-ebb mark of ordinary tides (*Lockhart v. National Lifeboat Institution* 40 Sc. L.R. 106); in this case Lord Moncreiff said that a boundary " 'by the sea-shore' and 'by the SEA' mean one and the same thing"; but see SEA BEACH; SEA FLOOD. So, where a piece of land was granted as bounded "on or towards the west by the sea shore," it was held that the grantee took a direct access to the sea that the grantor had reserved no intermediate land between the land granted and the sea, and (*per* Romer L.J.) that the land on the western boundary that had been uncovered by a recession of the sea was, as between the parties, an increase belonging to the grantee (*Mellor v. Walmesley* [1905] 2 Ch. 164); cp. *Scratton v. Brown* 4 B. & C. 496, cited SHORE; *Espley v. Wilkes* L.R. 7 Ex. 298, cited ABUT; *Brighton and Hove etc. Co. v. Hove Bungalows* [1924] 1 Ch. 372.

(2) The word "seashore" when used to describe the boundary of land comprised in a conveyance means *prima facie* the "foreshore" (*Government of State of Penang v. Ben Hong Oon* [1972] A.C. 425).

Stat. Def., Coast Protection Act 1939 (c. 39), s.1(12); Sea Fisheries (Shellfish) Act 1967 (c. 83), s.1.

See FORESHORE; SEA COAST; SHORE.

SEA WALL. (1) See *Keighley's Case* 10 Rep. 139; *Hudson v. Tabor* 2 Q.B.D. 290; *Fobbing Commissioners v. Regina* 11 App. Ca. 449.

(2) The right to let sea water through a gap in a sea wall to the land behind is unknown to the law, and to make a gap for this purpose is to commit an illegal act (*Symes and Jaywick Associated Properties v. Essex Rivers Catchment Board* [1937] 1 K.B. 548). But cp. *Thomas & Evans, Ltd. v. Mid Rhondda Co-operative Society, Ltd.* [1941] 1 K.B. 381.

SEAL. (1) A seal is essential to a deed.

(2) "Under the hands and seals": an impression made with ink, by means of a wooden block, is a sufficient sealing (*R. v. St. Paul Covent Garden* 14 L.J.M.C. 109; Sug. Pow. (8th ed.) 231, 232; *Sprange v. Barnard* 2 Bro. C.C. 585). "And if the party seal the deed with any seal besides his own, or with a stick, or any such like thing which makes a print, it is good" (Touch. 57). In *Re Sandilands* (L.R. 6 C.P. 411), it was held that a deed was proved to have been "sealed," though no seal was affixed to it, because pieces of ribbon were inserted in the parchment opposite to the signatures on which seals were to have been put, and the attestation clause stated the deed to have been "signed, sealed, and delivered"; but when cited, that case seems always to be distinguished as an exceptional application of an undoubted principle (see *National Provincial Bank v. Jackson* 33 Ch. D. 1; *Re Balkis Co.* 58 L.T. 300; *Re Smith* 67 L.T. 64).

(3) The presence of a seal against the signature of a party to a deed, is prima facie evidence that he sealed and delivered the document as his act and deed (*per* Channell J., *Marchant v. Morton* [1901] 2 K.B. 832).

(4) "Meticulous persons when executing a deed may still place their finger on the wax seal or wafer on the document, but it appears to me that, at the present day, if a party signs a document bearing wax or wafer or other indication of a seal, with the intention of executing the document as a deed, that is sufficient adoption or recognition of the seal to amount to due execution as a deed" (*per* Danckwerts J., in *Stromdale and Ball v. Burden* [1952] Ch. 223).

(5) As to the general law relating to a contract, not under seal, made by a corporation, see *Lawford v. Billericay* [1903] 1 K.B. 772 (and cases there cited) approving and following *Clarke v. Cuckfield* 21 L.J.Q.B. 349, 354; *Mackay v. Toronto Corporation* 88 L.J.P.C. 204; see further *Brooks v. Torquay* [1902] 1 K.B. 601; *Spencer v. Southall-Norwood* 69 J.P. 308. Cp. *Bournemouth Commissioners v. Watts* 11 Q.B.D. 87, cited INCURRED; *Nixon v. Erith* 93 L.J.K.B. 756.

(6) As to when the seal to a deed by an incorporated company may, by an outside person, be assumed to have been properly affixed, see *County of Gloucester Bank v. Rudry* [1895] 1 Ch. 629, cited GOODWILL, distinguishing *D'Arcy v. Tamar, etc., Railway* L.R. 2 Ex. 158, cited QUORUM; see further *Re Bank of Syria* [1900] 2 Ch. 272, cited QUORUM.

(7) A document, described as a "deed" and stating at its conclusion that it was "signed, sealed and delivered," had a printed circle as the place for the seal. The person executing the document signed across the circle and the signature was witnessed. The document was held to be properly executed as a deed even though no seal had been affixed (*First National Securities v. Jones* [1978] Ch. 109).

See L.S.; SIGNED. See further EXCEED; SHALL; SMALL.

Stat. Def., Forgery Act 1913 (c. 27), s.18.

SEALED. (1) The seal of a court, with the words “sealed with the seal of the court,” proves itself, and will be taken judicial notice of (*Doe d. Duncan v. Edwards* 1 P. & D. 408).

(2) As to when the court whose seal is to be used has no seal: see *Re Court Bureau Co.* [1891] W.N. 9.

(3) Vessel “corked and sealed” (s.2, Intoxicating Liquors (Sale to Children) Act 1901 (c. 27)). The “cork” might probably have been “sealed” by paper and gum, but “the true test is, whether or not the plug or stopper is so secured that the child cannot get at the liquor without the fact being detected” (*per* Alverstone C.J., *Mitchell v. Crawshaw* [1903] 1 K.B. 701; see further *Brooks v. Mason* [1902] 2 K.B. 743, cited KNOWINGLY); but, “unless the parties are agreed that the matter is one of common knowledge, there must be some evidence of this on which the magistrate can act” (*per* Alverstone C.J., *Macey v. McKenzie* 88 L.T. 631). The vessel did not need to be one provided by the seller and already corked and sealed: see *Jones v. Thervington* [1908] 2 K.B. 539, and cases therein cited, rejecting dictum of Darling J., in *Farndale v. Dillon* [1907] 2 K.B. 513.

SEAM. In relation to minerals, seam includes bed, lode, and vein: see Mines (Working Facilities and Support) Act 1923 (c. 20)), s.15.

See VEIN OR SEAM; IRON.

SEAMAN. (1) Merchant Shipping Act 1894 (c. 60), s.742, “‘seaman, includes every person (except masters, pilots, and apprentices duly indentured and registered) employed or engaged in any capacity on board any ship” (see thereon *The Wilhelm Tell* 61 L.J.P.D & A. 128). But “the employment must be to do the work of the SHIP” (*per* Jeune P., *The Ruby* [1898] P. 59); therefore a SHIP’s husband was not a “seaman” within s.10, Admiralty Court Act 1860 (c. 10) (*ibid.*). “A seaman may well be held to be ‘employed or engaged . . . on board’ ship, although at the particular point of time he may have been sent ashore on duties connected with the ship, such as obtaining stores or provisions, or taking a letter to the ship’s agent” (*per* Russell C.J., *R. v. Lynch* [1898] 1 Q.B. 61). A stevedore “is not, in any sense, a seaman or a seagoing person” (*per* Wills J., *R. v. City of London Court* 59 L.J.Q.B. 429); but, as regards the right to a maritime lien for wages, a caretaker of a vessel in dock for repairs preparatory to a voyage is a seaman (*ibid.* 25 Q.B.D. 339), even though such caretaker be a woman (*The Jane and Matilda* 1 Hagg. Adm. 187). See further CREW.

(2) A man engaged in navigating a sprit-sail barge on the tidal waters of the Thames, especially if the barge was capable of going coasting voyages, was held to be a seaman within s.13, Employers and Workmen Act 1875 (c. 90), and not a workman within s.10 of that Act (*Corbett v. Pearce* [1904] 2 K.B. 422); *secus*, of a fireman on board a barge on a canal (*Oakes v. Monkland Iron Co.* 21 Sc. L.R. 407), or of a man casually employed in warping a vessel from one side of a dock to another; see *Chislett v. Macbeth* [1910] A.C. 220, approving *Oakes v. Monkland Iron Co.* and disapproving *Corbett v. Pearce* *sup.*

(3) A man may be a “seaman” within Merchant Shipping Act 1894 (c. 60), though he is in port and has not signed articles for the next voyage, *e.g.* the store-keeper of a ship in port (*Thomson v. Hart* 28 Sc. L.R. 28).

(4) “Seaman or apprentice” (ss.111, 112, and 216, Merchant Shipping Act 1894 (c. 60)) includes one engaged for a foreign ship (*Hart v. Alexander* 36 Sc. L.R. 64).

(5) The Lascars Act 1823 (c. 80), and the subsequent Indian legislation relating to lascars, did not constitute a separate code of legislation for lascars which

excluded the regulations of the Imperial Parliament; therefore, lascar seamen on a British ship were “seamen” within s.210, Merchant Shipping Act 1894, sup., and had to have the same crew-space as other seamen (*Peninsular & Oriental Steam Navigation Co. v. The King* [1901] 2 K.B. 686).

(6) A seaman doing his ordinary work on a vessel lying afloat in a dock was not a “workman” who, being injured, was entitled to compensation under the Workmen’s Compensation Act 1897 (c. 37) (*Houlder Line v. Griffin* [1905] A.C. 224, cited Dock); but that was altered by s.7, Workmen’s Compensation Act 1906 (c. 58), by s.13 of which “seaman” had the same definition as that for Merchant Shipping Act 1894, sup. See also *Curtis v. Black* [1904] 2 K.B. 529; *Admiral Fishing Co. v. Robinson* [1910] 1 K.B. 540, cited SHARE; *Moore v. Manchester Liners* [1910] A.C. 498, cited EMPLOYMENT.

(7) “Seaman at sea” (Wills Act 1837 (c. 26), s.11) included a seaman who made a will in contemplation of sailing in wartime on a troopship undergoing refit (*In the Estate of Newland* [1952] P. 71). It also included a merchant seaman who made a nuncupative will after receiving orders to join a ship (*In the Estate of Wilson* [1952] P. 92). See also *Barnard v. Birch* [1919] 2 Ir. R. 404.

(8) The exception of “seamen” from the Conspiracy and Protection of Property Act 1875 (c. 86) (see s.16), did not avail for seafaring men generally, but only for such as were actually “employed or engaged” within the definition of “seamen” in s.742, Merchant Shipping Act 1894, sup. (*R. v. Lynch* sup.).

(9) In a warranty in the margin of a marine policy, “seamen besides passengers” means persons belonging to the ship’s company, including cook, surgeon, boys, etc., (*Bean v. Stupart* 1 Doug. 14).

(10) Admiralty Court Act 1861 (c. 10), s.10, a pilot is a seaman; see also *The Ambatielos* [1923] P. 68.

(11) “Seamen’s wages.” See discussion by Lord Blanesburgh, dissenting, in *Ellerman Lines, Ltd. v. Murray* [1931] A.C. 126.

Stat. Def., Merchant Shipping Act 1894 (c. 60), s.742; Merchant Shipping Act 1906 (c. 48), s. 49 (2); Merchant Shipping Act 1970 (c. 36), s.67.

“Distressed seamen”: see PASSENGER. See further DISTRESSED.

Advance notes: see ADVANCE.

See BRITISH SEAMAN; DEDUCTION; DRUNK; HOME; MARINER; THROUGH; WILFUL DISOBEDIENCE.

SEARCH. (1) To “enter or be” on land “in search or pursuit of game,” etc., (s.30, Game Act 1831 (c. 32)), the game sought for had to be live game (*Kenyon v. Hart* 34 L.J.M.C. 87; *Tanton v. Jervis* 43 J.P. 784); but if the justices found that the shooting from outside the land and the entering to pick up the game was all one connected act they would be upheld if they reached the conclusion that there was a “pursuit” of game within the section, which pursuit began whilst the game was alive (*Osbond v. Meadows* 31 L.J.M.C. 238; but see observations in *Kenyon v. Hart* sup.), and that was so though there was an interval of some hours between the shooting and the entry and at the time of the entry some other person might have taken away the dead game (*Horn v. Raine* 67 L.J.Q.B. 533). See hereon *Dyer v. Park* 38 J.P. 294. It was not necessary to prove that the search or pursuit was with the intention to kill the game at the time (*Stiff v. Billington* 84 L.T. 467). See ENTERING OR BEING.

(2) A reservation of power “to search for, dig, bore, sink, win, work, lead and carry away” minerals, must be exercised by underground mining (*Bell v. Wilson* 1 Ch. 303, cited MINE).

“General search”: “particular search.” Stat. Def., Births and Deaths Registration Act 1874 (c. 88), s.42; Marriage Act 1949 (c. 76), s.67.

See WARRANT.

SEASHORE. See SEA SHORE.

SEASON. “Shipment during the season”: see SHIPMENT.

See ENGAGEMENT.

SEASONABLE TIME. In the claim of a custom to walk and ride over certain arable land at all seasonable times, what is a “seasonable time” is a question partly of law and partly of fact; but when the corn is standing on the land is not a “seasonable time” for the exercise of such a custom (*Bell v. Wardell Willes*, 202).

SEASONABLE WOOD. *Semble*, “seasonable wood” is as nearly as possible equivalent to “coppice” (see *per Kay L.J.*, *Dashwood v. Magniac* [1891] 3 Ch. 306, cited **TIMBER**).

SEAWORTHY. (1) By being seaworthy “is meant that the ship shall be in a fit state as to repairs, equipment, and crew, and in all other respects, to encounter the ordinary perils of the voyage insured, at the time of sailing upon it. If the assurance attaches before the voyage commences, it is enough that the state of the ship be commensurate to the then risk; and, if the voyage be such as to require a different complement of men, or state of equipment in different parts of it—as if it were a voyage down a canal or river and thence across to the open sea—it would be enough if the vessel were, at the commencement of each stage of the navigation, properly manned and equipped for it. But the assured makes no warranty to the underwriters that the vessel shall continue seaworthy, or that the master or crew shall do their duty during the voyage, and their negligence or misconduct is no defence to an action on the policy where the loss had been immediately occasioned by the perils insured against” (*per Parke B.*, delivering the judgment in *Dixon v. Sadler* 9 L.J. Ex. 50; affirmed 8 M. & W. 895; adopted *Biccard v. Shepherd* 14 Moore P.C. 494; *Bouillon v. Lupton* 33 L.J.C.P. 37; *Davidson v. Burnand* L.R. 4 C.P. 117; *Quebec Marine Insurance v. Commercial Bank of Canada* L.R. 3 P.C. 234; and *Hedley v. Pinkney Co.* [1894] A.C. 222, inf. para. (11). See further *Ballantyne v. Mackinnon* [1896] 2 Q.B. 455). Insufficient ventilation of a cattle ship, or an insufficiency of men to attend to the cattle, is a breach of a warranty of seaworthiness (*Sleigh v. Tyser* [1900] 2 Q.B. 333).

(2) “Seaworthy” at common law and within the meaning of art. 3, rule 1 of The Hague Rules means that the ship, with master and crew, are in sufficient condition and fitness to meet the perils likely to be encountered on the voyage, and to convey the cargo in safety (*Actis Co. v. Sanko Steamship Co.*, *The Aquacharm* [1982] 1 W.L.R. 119). The obligation to make a ship seaworthy includes an obligation to ensure that it is fit to carry cargo (*Empressa Cubana Importadora de Alimentos v. Iasmos Shipping Company SA, The Good Friend* [1984] 2 Lloyd’s Rep. 586).

(3) So a steam ship is unseaworthy if she has not a sufficiency of coal to reach her next stage (*Greenock S.S. Co. v. Maritime Insurance* [1903] 2 K.B. 657; see further *McIver v. Tate Steamers* [1903] 1 K.B. 362, cited **PROVIDE**). So, a ship is unseaworthy if she be unfit to receive her cargo (*Rathbone v. MacIver* [1903] 2 K.B. 378); so, of negligence in loading cargo (*Cunningham v. Frontier S.S. Co.* [1906] 2 Ir. R.

12). See further *Upperton v. Union Castle S.S. Co.* 89 L.T. 289; *McFadden v. Blue Star Line* [1905] 1 K.B. 697; *Wade v. Cockerline* 53 W.R. 420; *Reed & Co. v. Page Son & East* [1927] 1 K.B. 743.

(4) As regards a voyage policy, “a ship is deemed to be seaworthy when she is reasonably fit, in all respects, to encounter the ordinary perils of the seas of the adventure insured” (s.39(4), Marine Insurance Act 1906 (c. 41)). “There is in all voyage policies (but not in any TIME policy, framed in the usual terms) a condition of seaworthiness implied” (*per* Campbell C.J., *Gibson v. Small* 4 H.L. Ca. 424); see further *Fawcus v. Sarsfield* 6 E. & B. 192; *Dudgeon v. Pembroke* 2 App. Ca. 284; *Greenock S.S. Co. v. Maritime Insurance sup.*; *Thomas v. Tyne and Wear Insurance* [1917] 1 K.B. 938.

(5) As to presumption of unseaworthiness if the ship is lost soon after leaving port: see *Ajum Goolam Hossen v. Union Marine Insurance* [1901] A.C. 362, approving *Pickup v. Thames & Mersey Marine Insurance* 3 Q.B.D. 594.

(6) “An exception from loss from unseaworthiness does not restrict that implied warranty (*Quebec Marine Insurance v. Commercial Bank of Canada sup.*). Where the ship is not seaworthy when she sails on her voyage, this is not remedied by her becoming so afterwards and before loss (*ibid.*, following *Forshaw v. Chabert* 3 Brod. & B. 158, and overruling *Weir v. Aberdeen* 2 B. & Ald. 320, 324, on this point).” Rosc. N.P. (17th ed.) 424.

(7) The ordinary exceptions of accidents, etc., in a bill of lading, do not apply until the voyage has commenced, and therefore the implied warranty of seaworthiness is not excluded by them (*Steel v. State Line S.S. Co.* 3 App. Ca. 72; *Tattersall v. National S.S. Co.* 12 Q.B.D. 297; *The Glenfruin* 10 P.D. 103), not even when the exceptions are couched in very wide terms (*Maori King v. Hughes* [1895] 2 Q.B. 550).

(8) For express clauses which will limit the implied warranty, see *The Cargo ex Laertes* 12 P.D. 187. But see DANGERS; GOOD SHIP.

(9) Where a charterparty voyage is divided into stages of navigation, the warranty attaches at the commencement of each stage (*Thin v. Richards* [1892] 2 Q.B. 141).

(10) “The warranty of seaworthiness has always been relative. Though absolute when it attaches, its precise extent and limitations are relative according to the standard which the parties must have been supposed to contemplate as applicable to the adventure” (*per* Collins L.J., *The Vortigern* [1899] P. 158, 159, instancing *Burges v. Wickham* 33 L.J.Q.B. 17). *The Vortigern* was followed in *Greenock S.S. Co. v. Maritime Insurance sup.*

(11) The implied obligation of the owner to use all reasonable means to insure the “seaworthiness of the ship, for the voyage” (s.5, Merchant Shipping Act 1876 (c. 80) see now s.458, Merchant Shipping Act 1894 (c. 60)) applies only to equipment: a ship is not unseaworthy within this phrase by reason of non-employment or mis-employment of appliances, if the appliances are at hand for use (*Hedley v. Pinkney Co.* [1894] A.C. 222).

(12) See further *Gibson v. Small* 4 H.L. Ca. 353; *Clapham v. Langton* 34 L.J.Q.B. 46; *Gilroy v. Price* [1893] A.C. 56; *Dobell v. Rossmore Co.* [1895] 2 Q.B. 408; *Queensland Bank v. P. & O. Steam Navigation* [1898] 1 Q.B. 567; *The Pentland* 13 T.L.R. 430; Park (8th ed.), ch. 11; Abbott (13th ed.), 376–389; Arn. (13th ed.), ss.686 *et seq.*; Scrutton (15th ed.), 93–104; Carver (9th ed.), 84–90.

(13) As to the meaning of the words “seaworthiness admitted” in a policy of insurance, see *Cantiere Meccanico Brindisino v. Janson* [1912] 3 K.B. 452; see also *Standard Oil Co. v. Clan Line S.S. Co.* [1924] A.C. 100.

(14) "Seaworthy trim": see *Britain Steamship Co. v. Dreyfus & Co.* 51 T.L.R. 307.

See DUE DILIGENCE; READY FOR SEA.

SECK RENT. See RENT SECK.

SECOND COUSIN. A testamentary gift to "second cousins" of the testator applies only to persons having the same great-grandfather or great-grandmother as himself, unless the nature of the gift or the wording of the will shows that other persons were meant to be included (*Re Parker, Brentham v. Wilson* 15 Ch. D. 528; 17 *ibid.* 262, which case see for observations by Jessel M.R., on *Mayott v. Mayott* 2 Bro. C.C. 125; see further *Bridgnorth v. Collins* 15 Sim. 538). But where there are no real "second cousins," then first cousins once removed will take; but not first cousins twice removed (*Slade v. Fooks* 8 L.J. Ch. 41; *Re Bonner, Tucker v. Good* 19 Ch. D. 201; *Wilks v. Bannister* 30 Ch. D. 512). See further *Charge v. Goodyer* 3 Russ. 140; *Glasier v. Foyster* 39 S.J. 656.

See COUSIN; FIRST COUSIN.

SECOND DEGREE. See PRINCIPAL IN SECOND DEGREE.

SECOND HAND. (1) Pt. 4, Merchant Shipping Act 1894 (c. 60), s.370, " 'Second hand' means, with respect to a fishing boat, the mate, or person next to the skipper, in authority or command on board the boat."

(2) "Second-hand goods or marine stores": see *Kelly v. Rice* [1906] 2 Ir. R. 1, cited GENERAL DEALER.

SECOND MARRIAGE. (Offences Against the Person Act 1861 (c. 100), s.57) "Second marriage" referred to the second marriage charged in the indictment; it was immaterial that the defendant had gone through other bigamous ceremonies (*R. v. Taylor* [1950] 2 K.B. 368).

"So long as she continues unmarried": see UNMARRIED.

See BIGAMY; MARRY; WIDOW.

SECOND MORTGAGE. See PUISNE.

SECOND OFFENCE. (1) "When a 'second offence' is the subject of distinct punishment, it is an offence committed after conviction of a first" (Maxwell (9th ed.) 354, citing 2 Inst. 468, and so held as regards "second offence" in s.3, Licensing Act 1872 (c. 94) (*R. v. South Shields Licensing Justices* [1911] 2 K.B. 1; see further 1 Hale P.C. 686); and a penalty for a second offence can only be inflicted where both convictions are under the same enactment, although each might be supported by the same evidence (*Ex p. Anthers, or Authers* 22 Q.B.D. 345).

(2) "The second time . . . for any offence" (Town Police Clauses Act 1847 (c. 89), s.50). A taxi proprietor can have his licence revoked even though the "second offence" was not identical with the first (*Bowers v. Gloucester Corporation* [1963] 2 W.L.R. 386).

SECONDARY. (1) " 'Secondary' is the technical medical word for a disease which is not the primary cause of death. If a man falls through the ice and is drowned, that is death by accident; but if he walks home in his wet clothes, and catches a cold which settles on his lungs, and he dies, that is death from a 'secondary cause' " (*per*

Mellish, arg. *Smith v. Accident Insurance* L.R. 5 Ex. 302; see hereon judgment of Kelly C.B. [the case, however, was decided on another point]; see also *Fitton v. Accidental Death Insurance* 34 L.J.C.P. 28). See ACCIDENT.

(2) “Secondary action” (Employment Act 1980 (c. 42), s.17 (3)). Where there was a contract of towage between a tug company and the sub-charterers of a vessel, the action of the tug crew in refusing to tow the vessel was “secondary” to the trade dispute between the owners of the vessel and its crew (*Merkuv Island Shipping v. Laughton* [1983] 1 All E.R. 334). Where, in furtherance of its dispute with company A, a union instructs its members working for the respondents to breach their contracts of employment, with the purpose of disrupting the respondents’ business with company B, this is “secondary action” within the meaning of s.17(3) so that there is no “trade dispute” for the purposes of s.13(1) of the Trade Union and Labour Relations Act 1974 (c. 52) between the union and the respondents, notwithstanding that companies A. and B. are associated (*Dimbleby and Sons v. National Union of Journalists* [1984] 1 All E.R. 751).

(3) “Secondary education” see *R. v. Cockerton* [1901] 1 Q.B. 729, cited ELEMENTARY, and EVENING.

“Secondary conveyance,” “secondary evidence”: see PRIMARY.

SECRET DISPOSITION. “Secret disposition of the dead body of the said child,” to conceal the birth thereof (Offences Against the Person Act 1861 (c. 100), s.60); these words “include cases in which the body is placed in a situation where it is not likely to be found except by accident or upon search, although the body is in no way concealed from any one who happens to go to that place” (Steph. Cr. (9th ed.) 228, citing *R. v. Brown* L.R. 1 C.C.R. 244; see also *R. v. Perry* 24 L.J.M.C. 137; *R. v. Cook* 22 L.T. 216. In a note, the learned author asks: “If a woman were to leave a child’s body by night in the middle of a street, or to drop it by day in a crowd of people, there would be an effectual concealment of the birth, but would there be a ‘secret disposition’ of the body?”). See further *R. v. Rosenberg* 70 J.P. 264.

SECRET PROFIT. (1) In all fiduciary relationships—*e.g.* cestui que trustee and trustee, company and its directors, master and servant, principal and agent—the fundamental rule is that the person entrusted with, or employed to discharge, a duty, is not to make a secret profit thereby, for a “watch-dog has no right, without the knowledge of his master, to take a sop from a possible wolf” (*per* Bowen L.J., *Re North Australian Co.* [1892] 1 Ch. 341); the sop belongs to the master. The master need not pay such a watch-dog any remuneration (*Salomons v. Pender* 34 L.J. Ex. 95), and may recover such remuneration as he may have ignorantly paid (*Andrew v. Ramsay* [1903] 2 K.B. 635; *Powell v. Jones* [1905] 1 K.B. 11); but see *Hippesley v. Knee* [1905] 1 K.B. 1, in which case *Salomons v. Pender* and *Andrew v. Ramsay* were distinguished. See also *Stubbs v. Slater* [1910] 1 Ch. 632, cited PLEDGE; see further *Bartram v. Lloyd* 90 L.T. 357; *Re Waterman’s Will Trusts* [1952] 2 T.L.R. 877.

(2) The taking of a secret profit is a good ground for dismissing the servant: see *Federal Supply, etc., Co. v. Angehrn* 30 L.J.P.C. 8, cited CONDONATION.

(3) Company and its directors: *Re Sale Hotel Co.* 78 L.T. 368; *Gluckstein v. Barnes* [1900] A.C. 240. See further *Costa Rica Railway v. Forwood* [1901] 1 Ch. 746; *Re Leeds & Hanley Theatres Co.* [1902] 2 Ch. 809; but see *Burland v. Earle* [1902] A.C. 83, applying the principles of *New Sombrero Phosphate Co. v. Erlanger* 3 App. Ca. 1218; *Re Lady Forest Co.* [1901] 1 Ch. 582; *Re Darby* 80 L.J.K.B. 180; *Jubilee Mills v. Lewis* [1924] A.C. 958.

(4) Master and servant and principal and agent; see **BRIBERY**; *Morison v. Thompson* L.R. 9 Q.B. 480; *De Bussche v. Alt* 8 Ch. D. 314, cited **AQUIESCENCE**; *per* Bowen L.J., *Boston Deep Sea Fishing Co. v. Ansell* 39 Ch. D. 363, 364; *Reading v. A.-G.* [1951] A.C. 507; *Industries & General Mortgage Co. v. Lewis* [1949] 2 All E.R. 573; *Nordisk Insulinlaboratorium v. Gorgate Products* [1953] 2 W.L.R. 879; **MANAGING OWNER**. See further *per* Stirling L.J., *Erskine v. Sachs* [1901] 2 K.B. 504; Prevention of Corruption Act 1906 (6 Edw. 7, c. 34).

SECRET TRUST. (1) “When property is vested in a person for purposes not declared by the instrument devising or granting it, and it appears that but for the testator’s or grantor’s confidence that those purposes would be fulfilled the devise or grant would not have been made, a secret trust is created; and, on the ground that fraud would be committed by the devisee or grantee if he did not fulfil those purposes, that trust may in equity be enforced against him” (Godefroi (5th ed.), ch. 11, which see hereon). See further *Re Pitt-Rivers* [1902] 1 Ch. 403; *O’Brien v. Condon* [1905] 1 Ir. R. 51, cited **DISTRIBUTE**; *Blackwell v. Blackwell* [1929] A.C. 318.

(2) Therefore, in the case of a will, the devisee or legatee, charged with a secret trust, must be informed (of the document creating the trust) in the lifetime of the testator, and he is not affected by it if he discovers it after the testator’s death; the “so-called trust does not affect the property except by reason of a personal obligation binding the individual devisee or legatee; if he renounces and disclaims, or dies in the lifetime of the testator, the person claiming under the document can take nothing against the heir-at-law or next-of-kin or residuary devisee or legatee—*Tee v. Ferris* 25 L.J. Ch. 437, is instructive on this point” (*Re Maddock* [1902] 2 Ch. 220; *Re Falkiner* [1924] 1 Ch. 88).

(3) “The title of the party claiming under the secret trust, or claiming by virtue of personal confidence, is a title *dehors* the will, and which cannot be correctly termed testamentary” (*per* Lord Westbury *Cullen v. A.-G. Ireland* L.R. 1 H.L. 198; on which see *per* Kekewich J., *Re Maddock* [1901] 2 Ch. 372). But the conclusion drawn by Kekewich J., from Lord Westbury’s dictum was rejected by the Court of Appeal, who held that though the title under such a secret trust is *dehors* the will, yet “as between the devisee or legatee and the persons interested under the memorandum creating the trust, all the same consequences must follow as would follow if the memorandum had in fact formed part of the will” (*per* Cozens-Hardy L.J.); and, therefore, where a residuary legatee took a specific part of the residue charged with such a trust, that part was **SPECIFIC** gift, as far as the residuary legatee was concerned, so that the uncharged part had (to the extent of its sufficiency) to pay the debts, estate duty, and costs, in exoneration of the charged part (*Re Maddock* [1902] 2 Ch. 220, distinguished *Re Gardner* 92 L.J. Ch. 569).

(4) A testamentary gift to trustees on trusts to be communicated to them after the date of the will fails, for the effect must be that the testator, by afterwards communicating the trusts, makes an unexecuted will. It makes no difference if the trusts are in fact already communicated at the date of the will, for in that case the trusts would be inconsistent with the terms of the will (*Re Keen* [1937] Ch. 236).

(5) A gift on trust by reference to an existing instrument or any instrument which may be substituted therefor also fails, for evidence is not admissible to show whether a later document was substituted or not (*ibid.*). *Semble*, it would be otherwise if the gift were by reference to an existing instrument, unless some other instrument were substituted therefor; in that case the trusts of the later instrument could never have effect, but those of the existing instrument would stand if they had not been superseded (*Re Jones* [1942] Ch. 328). See 53 L.Q.R. 501.

(6) Where a legacy given by a will to trustees on a secret trust which is duly communicated to them is increased by a codicil and the increase is not communicated, the trusts of the increased sum fail (*Re Colin Cooper* [1939] Ch. 811). See *Re Stead* [1900] 1 Ch. 237, and cases there cited.

SECRET USE. “Secret use” (Patents Act 1949 (c. 87), s.14(1) (e)) connotes conscious concealments of use on a subjective basis, so that where a manufacturer produced a drug without recognising its patentable potential and then blended it into capsules, where its identity was lost, then it was not being used “secretly” under this section when the capsules were sold (*R. v. Patents Appeal Tribunal ex p. Beecham Group* [1973] 1 Q.B. 318). The House of Lords (3 to 2) affirmed the decision of the Court of Appeal, (*Bristol-Myers Co. v. Beecham Group* [1974] A.C. 646).

SECRETARY. (1) Note signed “for A. B. & C.—C. D., Secretary,” does not make the secretary personally liable (*Alexander v. Sizer* L.R. 4 Ex. 102). If, however, a person signs in a way so as to make himself individually liable, he will not escape liability by adding “secretary” to his signature (*Bottomley v. Fisher* 31 L.J. Ex. 417). Cp. **MANAGER; DIRECTOR.**

(2) A promissory note to the “secretary for the time being” of a company or other body, is bad because the payee is uncertain, for it cannot be known at the making of the document who will be secretary when it matures (*Storm v. Stirling* 23 L.J.Q.B. 298). See further *Timms v. Williams* 3 Q.B. 413.

(3) “The duties of a company’s secretary are well understood. They are of a limited, and of a somewhat humble, character. ‘A secretary,’ said Lord Esher, ‘is a mere servant. His position is that he is to do what he is told, and no person can assume that he has any authority to represent anything at all; nor can anyone assume that statements made by him are, necessarily, to be accepted as trustworthy without further inquiry’—*Newlands v. National Employers Accident Association* 54 L.J.Q.B. 430, repeated in *Barnett v. South London Tramways* 18 Q.B.D. 815” (*per* Lord Macnaghten *Whitechurch, Ltd. v. Cavanagh* [1902] A.C. 124). See further *Tendring Waterworks Co. v. Jones* [1903] 2 Ch. 615; *Lloyd v. Grace Smith* [1912] A.C. 716.

Stat. Def., Companies Act 1948 (c. 38), s.415.

See **CHIEF; COLONIAL.**

SECTION. (1) “Section of a trade or industry” (Industrial Disputes Order, 1951 (No. 1376), art. 1) refers to functions and not to localities. It refers to the section of a trade or industry which is some particular part of the trade or industry (*R. v. Industrial Disputes Tribunal ex p. Courage & Co.* [1956] 1 W.L.R. 1062).

(2) “Section of the public” (Race Relations Act 1968 (c. 71), s.2(1)). Children in the care of foster parents are a “section of the public” within the meaning of this section (*Race Relations Board v. Applin* [1973] 1 Q.B. 815). A club of limited membership is not a “section of the public,” because these words are words of limitation, “public” being used in contrast to “private” and there is no public element in a club of this nature (*Race Relations Board v. Charter* [1973] 2 W.L.R. 299). Members of a club which provides amenities for properly elected members do not comprise a “section of the public” for the purposes of this section (*Charter v. Race Relations Board* [1973] A.C. 868; *Dockers’ Labour Club and Institute v. Race Relations Board* [1976] A.C. 285). But where facilities were provided for children in the care of local authorities, as opposed to purely private arrangements, they were held

to be provided to a section of the public (*Applin v. Race Relations Board* [1975] A.C. 259).

SECURE. (1) The direction in s.32, Matrimonial Causes Act 1857 (c. 85), to “secure” a gross or annual sum to a wife, did not authorise an order for payment direct to the wife, but meant that the sum was to be secured in such a way as to provide for her (*Medley v. Medley* 7 P.D. 122). “An order to secure” seems to suggest a disposition or obligation of some sort, made or entered into pursuant to the order, as opposed to a mere direction to pay contained in the order itself” (*per Jenkins L.J.*, in *Yates v. Starkey* [1951] Ch. 465). See further *Twentyman v. Twentyman* [1903] P. 86, cited GROSS; *Barker v. Barker* [1952] 1 All E.R. 1128.

(2) The words “or otherwise secure,” in s.10, Distress for Rent Act 1737 (c. 19), enlarged the word “impound” with which they were there associated, and gave it a wider meaning than if it had been used alone (*per Tindal C.J.*, *Thomas v. Harries* 9 L.J.C.P. 308; see further *Jones v. Beirnsstein* [1900] 1 Q.B. 100, cited POSSESSION). See IMPOUND.

(3) “Let under a secure tenancy” (Housing Act 1980 (c. 51), ss.33(1), 34 (1)). These words cannot apply to premises which ceased to be let under a periodic tenancy by October 3, 1980; the date on which that part of the 1980 Act came into force granting security of tenure to council tenants (*Harrison v. Hammersmith and Fulham Borough Council* [1981] 1 W.L.R. 650).

(4) “I hereby undertake to secure the moneys you may have advanced or may hereafter advance”: held, insufficient, as not necessarily showing anything beyond a past consideration (*Raikes v. Todd* 8 L.J.Q.B. 35). Cp. ADVANCE; GIVEN; HAVING.

(5) “Securing” the payment of royalties (s.19(6), Copyright Act 1911 (c. 46)): see *Monckton v. Pathé Frères Pathéphone, Ltd.* [1914] 1 K.B. 395.

(6) “The roof and sides . . . shall be made secure” (Coal Mines Act 1911 (c. 50), ss.49, see now Mines and Quarries Act 1954 (c. 70), s.48). This means that the roof must not be dangerous by reason of liability to fall (*Jackson v. National Coal Board* [1955] 1 W.L.R. 132). “Secure” in these sections “imports a physical condition of stability which will ordinarily result in safety.” It does not imply absolute liability, but rather liability for physical defects which could reasonably have been foreseen (*Brown v. National Coal Board* [1962] A.C. 574).

(7) “It shall be the duty of every manager . . . to secure that any quarrying operations . . . are carried on so as to avoid danger from falls” (Mines and Quarries Act 1954 (2, c. 70), s.108(1)) means that it shall be incumbent on every manager to secure, *i.e.* to achieve the result that any quarrying operations shall be carried on so as to avoid any falls which occur, producing any danger avoidable by practicable precautions (*Brazier v. Skipton Rock Co.* [1962] 1 W.L.R. 471).

(8) A guard dog is “secured” within the meaning of the Guard Dogs Act 1975 (c. 50), s.1(1) if a person coming to the guarded premises is able to remove himself from the ambit of the dog (*Hobson v. Gledhill* [1978] 1 W.L.R. 215).

“Secure foothold”; “secure handhold” (Factories Act 1961 (c. 34), s.29(2)), see HANDHOLD; FOOTHOLD.

SECURED. (1) On a sale of a leasehold ground-rent it was described as “amply secured”; it was really secured by an underlease which was for a longer term than the lessor had, and therefore operated as an assignment of the original lease, and there was no power of distress; but the conditions stated that the purchaser should not object by reason of the term being in excess of the term granted by the original

lease, inasmuch as the deeds “may be inspected for 10 days immediately preceding the day of sale by intending purchasers”; the purchaser was, under those conditions, held bound to complete, although it was certainly doubtful whether the ground-rent was properly secured (*Smith v. Watts* 28 L.J. Ch. 220). Cp. WELL SECURED.

(2) Sum “secured by an express trust” (s.10, Real Property Limitation Act 1874 (c. 57)); see *Re Davis* [1891] 3 Ch. 119, cited LEGACY; *Williams v. Williams* [1900] 1 Ch. 152; see *Re Jordison* [1922] 1 Ch. 441.

(3) “Secured by anchors” (Salmon and Freshwater Fisheries Act 1923 (c. 16), ss.92(1)), denoted something which was secured so that it was fixed and stationary. A net to which anchors were attached to act as a brake or drag was not “secured” within the meaning of this section (*Percival v. Stanton* [1954] 1 W.L.R. 300).

See AMOUNT.

SECURED CREDITOR. (1) A “secured creditor” is one who has security for his debt; see SECURITY.

(2) The Bankruptcy Act 1883 (c. 52), s.168—see Bankruptcy Act 1914 (c. 59), s.167—defined a “secured creditor,” for bankruptcy purposes, as “a person holding a mortgage, charge, or lien, on the property of the debtor, or any part thereof, as a security for a debt due to him from the debtor.” Accordingly, such a “secured creditor,” e.g. in s.9, Bankruptcy Act 1883, sup.—see now s.7 of 1914 Act—could not be defined as a person holding a security as against the whole or some part of the debtor’s estate; that definition would have been too wide; the security had to be of the kind prescribed, i.e. (1) mortgage, (2) charge, or (3) lien, “on the property of the debtor,” on which see *Re Perkins* 24 Q.B.D. 613; “the debtor” being the bankrupt, and therefore a petitioning creditor against a surety to him, was not a “secured creditor” as regards such proceedings, by holding an unrealised security from his principal debtor (*Re Hodges* 3 Manson, 329). The appointment of one of the plaintiffs (judgment creditors) as receiver, without security, of the stock in trade of the defendant, did not make the plaintiffs “secured creditors” as against a bankruptcy trustee (*Re Dickinson Ex p. Charrington* 22 Q.B.D. 187; see on this case *Re Potts Ex p. Taylor* [1893] 1 Q.B. 648). So, generally, of a receiver (*Croshaw v. Lyndhurst Ship Co.* [1897] 2 Ch. 154); so, of a sequestrator who had not obtained an order for sale (*Re Hastings* 61 L.J.Q.B. 654). So, an indorsee from the payee of a promissory note collaterally secured by a guarantee, which guarantee was transferred to him, did not hold the guarantee as a security on the property of the payee; and, on the bankruptcy of the latter, might prove without deducting the value of the guarantee (*Re Hallett* [1894] 2 Q.B. 256). See *Re Button* [1905] 1 K.B. 602, cited ESTIMATE; SO VALUED; FURTHER SECURITY.

(3) “Secured creditor,” under s.167, Bankruptcy Act 1914 (c. 59); see *Re Pearce* [1919] 1 K.B. 354; see also *Re Dutton, Massey & Co.* [1924] 2 Ch. 199.

(4) In an administration of a deceased’s estate, or of a liquidating company, the phrase “secured and unsecured creditors,” etc., in s.10, Judicature Act 1875 (c. 77), incorporated the bankruptcy rule which provided for payment of debts *pari passu*, except wages and rates and taxes (*Re Whitaker* [1901] 1 Ch. 9, overruling *Re Maggi, Winehouse v. Winehouse* 20 Ch. D. 545, and *Smith v. Morgan* 5 C.P.D. 337). An executor’s right of retainer (see RETAIN) did not make him a “secured creditor” within this section (*Lee v. Nuttall* 12 Ch. D. 64, 65). See *Re McMurdo* [1902] 2 Ch. 684; INSUFFICIENT; RETAIN.

(5) Secured creditor, as regards proving in a bankruptcy or company’s winding

up, includes a mortgagee who has realised the property mortgaged (*Re London, etc., Hotels Co.* [1892] 1 Ch. 639).

See CREDITOR.

SECURELY. (1) “Securely fenced” (Factories Act 1937 (c. 67), s.14, now Factories Act 1961 (c. 34), s.14). For fencing to be secure, it must be substantial, properly maintained, and kept in position (*Massey v. Lingwood* (S. & P.), 89 S.J. 316); see also *Smith v. Morris Motors* [1950] 1 K.B. 194. The same test should be applied in deciding whether a machine is securely fenced as is applied in deciding whether it is dangerous (*Burns v. J. Terry & Sons* [1951] 1 K.B. 454). “ ‘Securely fenced’ may well mean ‘so fenced as to give security from such dangers as may be reasonably expected’ ” (*per* Lord du Parc in *Carroll v. Andrew Barclay & Sons* [1948] A.C. 477). A fence does not cease to be secure because by some perverted act the safeguards can be rendered nugatory (*Carr v. Mercantile Produce Ltd.* [1949] 2 K.B. 601). If the machine cannot be securely fenced it should not be used: see *Dennistoun v. C. E. Greenhill Ltd.* [1944] 2 All E.R. 434; *Mackay v. Ailsa Shipbuilding Co.* 1946 S.L.T. 104. The obligation to fence securely every dangerous part of any machine is absolute (*John Summers & Sons v. Frost* [1955] A.C. 740). It is “an obligation to provide a guard against contact with any dangerous part of a machine and not an obligation to guard against dangerous materials or articles ejected from the machine in motion”: *per* Lord Morton of Henryton in *Close v. Steel Co. of Wales* [1962] A.C. 367. To be secure enough to satisfy this section a fence must be sufficient not only to guard against accidents but also to deter anyone willing to run a risk and take a short cut (*Quintas v. National Smelting Co.* [1960] 1 W.L.R. 217).

(2) The side entrance itself of a disused mine had to be “securely fenced” (s.13, Metalliferous Mines Regulation Act 1872 (c. 77)), whether on enclosed ground or not (*Foster v. Owen* 62 L.J.M.C. 7).

See SAFELY.

SECURING. “Securing an offer”: see *Bennett, Walden & Co. v. Wood* [1950] 2 All E.R. 134.

SECURITIES. (1) “Securities” (s.16, Bankruptcy Act 1869 (c. 71)): see *Re Frith* 12 Ch. D. 337; “Securities” to be specified in a bankruptcy proof of debt, included bills given as collateral security for a mortgage, even though they were not being included in the proof (*Re Ruthen* 5 Manson, 227). See Bankruptcy Act 1914 (c. 59), s.13, Sched. I, r. 10.

(2) A power of investment in such “securities” as may be thought proper does not authorise the purchase of a limited banking company’s shares not fully paid-up (*Murphy v. Doyle* 29 L.R. (Ireland) 333, cited FUNDS; see further *Re Rayner* [1904] 1 Ch. 176, cited SECURITY). “Securities,” in Conveyancing Act 1881 (c. 41), Settled Land Act 1882 (c. 38) “include stocks, funds, and shares.”

(3) “Securities,” as regards a banker’s general lien, mean “such securities as promissory notes, bills of exchange, exchequer bills, coupons, bonds of foreign governments,” etc., but, *semble*, not title deeds (*Wyld v. Radford* 33 L.J. Ch. 53).

(4) “Other securities” (s.12, Judgments Act 1838 (c. 110)), “I think means only securities *ejusdem generis* with the securities particularly mentioned in the section; and I doubt whether the section can be held to apply to goods in pledge” (*per* North J., *Re Rollason* 34 Ch. D. 495). So, a bequest of “foreign bonds and other securi-

ties" was held to pass foreign securities only, although the testator had large investments in British funds (*Ferguson v. O'Gilby* 2 Dr. & War. 548). See further SECURITY FOR MONEY.

(5) A testamentary direction that funds shall be invested in, *e.g.* consols, "and in no other securities" ought to be observed by the court even as regards cash under the control of the court (*Re Ovey* [1900] 2 Ch. 524, herein not following *Re Wedderburn* 9 Ch. D. 112).

(6) A testamentary direction to invest in Government securities, or heritables, "or in such other securities as my trustees shall think proper," authorises an investment on personal security (*Ritchie v. Ritchie* 25 Sc. L.R. 515, cited by Lord Kyl-lachy, *Sim v. Fergusson* 43 Sc. L.R. 795, cited PERSONAL SECURITY). See also *Re Scorer* 94 L.J. Ch. 196. See TRUSTEE ACT 1925 (c. 19), Pt. I.

(7) "Securities standing in my name"; these words in a specific devise will not include foreign government bonds to bearer kept by testator's banker in an envelope indorsed with the name of the proprietor and with a reference to the page of a safe custody register kept by the bankers on which the bonds were entered under the proprietor's name: see *Stoneham v. Woods* [1914] 2 Ch. 115. A bequest of "securities for money" in a will made in 1880 was held not to pass stocks and shares in the absence of a context showing that securities meant more than its ordinary meaning of money secured on property; see *Re Hutchinson* 88 L.J. Ch. 352.

(8) In a bequest, "securities" held not to include stocks and shares in companies, but to include Government bonds and stock, which are secured on the national revenue (*Re Smithers* [1939] Ch. 1015).

(9) A bequest of "securities" meant "investments" and was not confined to secured investments but, while not being so extensive as to mean any property at all (such as jewellery), included investments within the range authorised by law and any stocks, shares or bonds by way of investment (*Re Douglas' Will Trusts, Lloyds Bank v. Nelson* [1959] 1 W.L.R. 744).

(10) "Effects and securities": see *Re David and Matthews* [1899] 1 Ch. 378, cited EFFECTS.

(11) "Securities" (Finance and Income Tax Acts): see *Singer v. Williams* [1918] 2 K.B. 432, affirmed [1921] 1 A.C. 41; see further *Bradbury v. English Sewing Cotton Co.* [1923] A.C. 744; *Archer-Shee v. Baker* [1927] A.C. 844. See also FOREIGN POSSESSIONS.

"Transaction in securities." See *I.R.C. v. Parker* [1966] A.C. 141, cited TRANSACTION.

See also HERITABLE SECURITIES; GOVERNMENT SECURITIES; PUBLIC SECURITIES; REAL SECURITY; SECURITY; SECURITY FOR MONEY; STOCKS; ISSUE OF DEBENTURES. Cp. INVESTMENTS.

SECURITY. (1) A "security," speaking generally, is anything that makes the money more assured in its payment or more readily recoverable; as distinguished from *e.g.* a mere I.O.U. which is only evidence of a debt. See SECURITIES. See further, *per* Stirling L.J., *British Oil Mills Co. v. Inland Revenue Commissioners* [1903] 1 K.B. 697.

(2) Thus, bank notes, bills of exchange, promissory notes, and cheques, are "securities" (Byles (29th ed.)). See further *Brown v. Inland Revenue Commissioners* [1895] 2 Q.B. 598, cited MARKETABLE SECURITY; SECURITY FOR MONEY; but see SECURITY FOR DEBT.

(3) And writing is not necessary; for a parol deposit of deeds to secure a debt

creates an equitable mortgage (Fisher and Lightwood; Coote (9th ed.)), and is obviously a “security.”

(4) Probably the more general meaning of “security” is, money secured on property (*per* Farwell J.); but that has been termed “its narrow, archaic, meaning” (*per* Williams L.J.), yet still it is its *prima facie* meaning, though “a flexible one” (*per* Romer L.J.), and, *semble*, it will, somewhat easily, yield to a context; therefore, where a testator (being a man of large means and having many kinds of investments) directed “that the moneys liable to be invested under this my will may be invested in such securities as my trustees, in their absolute discretion, shall think fit, and I authorise my trustees to continue or leave any moneys invested at my death in or upon the same securities”; it was held that “securities” was used in the sense of investments, and that the trustees were authorised to invest in the purchase of the ordinary stock of the Midland Railway and of the London & North Western Railway (*Re Rayner* [1904] 1 Ch. 176; this case was applied in *Re Gent and Eason* [1905] 1 Ch. 386; see further *Re Tapp and London & India Docks Co.* 74 L.J. Ch. 523, cited VARY). Cp. *Re Mordan* [1905] 1 Ch. 515, cited INVEST. Cp. *Re Hutchinson* 88 L.J. Ch. 352.

(5) “Mortgage, pledge, charge, or other security” (s.61(4), Sale of Goods Act 1893 (c. 71)): see *Rennett v. Mathieson* 40 Sc. L.R. 421; *Craighead v. Fraser* 1920 S.C. 674.

(6) A foreign attachment out of the Lord Mayor’s Court (*Levy v. Lovell* 14 Ch. D. 234), or an attachment in the Tolzey Court of Bristol (*Ex p. Sear* 17 Ch. D. 74), gives no “security” for the debt sued for, the object of either process being merely to compel the appearance of the defendant.

(7) A garnishee order, as soon as served on the garnishee, created a “security” to the judgment creditor on the debt therein comprised; see CHARGE, for cases hereon. But the order must now be completed “by receipt of the debt” to be good as against bankruptcy (Bankruptcy Act 1883 (c. 52), s.45). See now Act of 1914 (c. 59), s.40.

(8) Money paid into court to abide the event of an action is a security to the other litigant, who, if he succeeds, becomes thereby a secured creditor (*Ex p. Tate Re Keyworth* 43 L.J. Bank. 102; nom. *Ex p. Banner Re Keyworth* 9 Ch. 379; *Ex p. Bouchard Re Moojen*, 12 Ch. D. 26; *Re Ford* [1900] 2 Q.B. 211), even though there be a denial of liability by the payer (*Re Gordon* [1898] 2 Q.B. 516).

(9) A seizure of goods under a *fieri-facias* (even before sale) gave the execution creditor a “security” within s.12, Bankruptcy Act 1869 (c. 71) (*Slater v. Pinder* L.R. 6 Ex. 228; 7 *ibid.* 95; *Ex p. Locke Re Hall* 6 Ch. 795); but no such security was created until seizure (*Ex p. Williams* 7 Ch. 314); and when the *fieri-facias* was for a sum exceeding £50 and was against a trader, it was defeasible under s.87. An execution against goods, to be good against bankruptcy, must now be “completed by seizure and sale” (Bankruptcy Act 1883 (c. 52), s.45—see Act of 1914 (c. 59), s.40).

(10) Seizure of land under an *elegit* (*Ex p. Abbot Re Gourlay* 15 Ch. D. 447), or lodging an *elegit* with a sheriff who is remaining in possession under a former *elegit* (*Ex p. Shaw* [1884] W.N. 60), or the appointment of a receiver (*Ex p. Evans Re Watkins* 13 Ch. D. 252), gives a security on land within the Bankruptcy Act 1869 (c. 71), which is not taken away by s.45, Bankruptcy Act 1883 (c. 52). But that latter section (see now s.40, Act of 1914, *sup.*) is fatal to a receivership of goods (*Re Dickinson Ex p. Charrington* 22 Q.B.D. 187), and *elegit* does not now extend to goods (s.146, Bankruptcy Act 1883, *sup.*). See SECURED CREDITOR.

(11) A verdict before judgment is probably not a “security” (*Jones v. Thompson*

27 L.J.Q.B. 234); but “a judgment is, in every sense of the word, a security to a creditor for payment of his claim” (*per Kelly C.B.*, *West Ham v. Owens* L.R. 8 Ex. 37).

(12) (Friendly Societies Act 1896 (c. 25), s.44(1)(e)). Prima facie “security” must be confined to the stricter or more narrow significance of debts or money claims the payment of which is secured or guaranteed by a charge on some property or by some document recording the obligation of some person or corporation to pay (*Re United Law Clerks’ Society* [1947] Ch. 150).

(13) A power to borrow on “any security” of a company authorises a charge on uncalled capital (*Newton v. Anglo-Australian Co.* [1895] A.C. 244; see further PROPERTY).

(14) “Security given by the borrower” (Moneylenders Act 1927 (c. 21), s.6). A third party’s guarantee provided by a borrower may be “security given by the borrower” (*Temperance Loan Fund, Ltd. v. Rose* [1932] 2 K.B. 522). Where a borrower offers the deposit of a third party’s securities these are “securities” within the meaning of this section (*Barclay v. Prospect Mortgages* [1974] 1 W.L.R. 837).

(15) Landlord’s security for rent in the liquidation of a company: see *Re Oak Pits Co.* 21 Ch. D. 322; *Re New Oriental Bank* [1895] 1 Ch. 753.

(16) Loan “upon security of any lands” (s.1, Usury Act 1839 (c. 37)), did not comprise a warrant of attorney to enter up judgment for money borrowed, though when entered up the judgment would be a charge on land under s.13, Judgments Act 1837 (c. 110) (*Lane v. Horlock* 16 L.J.Q.B. 87).

(17) “Protection and security” of a wife’s separate property: see *Larner v. Larner* [1905] 2 K.B. 539, cited SEPARATE PROPERTY.

(18) “Reasonable security” for payment of so much in the £ (Bankruptcy Act 1890 (c. 71), s.3(9), now Bankruptcy Act 1914 (c. 59), s.16(10)) does not contemplate the requirement of such a security as a prudent person would require for the repayment of a loan; the phrase means a reasonable chance, or commercial probability, that the required payment will be made, or that the money therefor will be realised by the scheme of arrangement (*per Williams J.*, *Re Bottomley* 10 Morr. 262). But to propose to vest the property of the debtor in a trustee for him to carry on the debtor’s business, *e.g.* building speculations, for the benefit of the creditors, does not provide such “reasonable security,” even though the SCHEME be assented to by all the unsecured creditors (*Re Flew* [1905] 1 K.B. 278). Where there is a scheme of arrangement obviously highly favourable to the creditors and it has been accepted by them, the court should take a broad view of the words “reasonable security” in this section (*Re Murray, A Debtor; ex p. Murray v. Official Receiver* [1969] 1 W.L.R. 246).

(19) To be a “security” within Sched. I of the Stamp Act 1891 (c. 39) a document need not be a bond or a covenant. A written sale agreement could be enough (*I.R.C. v. Ansbacher & Co.* [1963] A.C. 191). A collateral security could be covered by the Schedule even though what is secured is an executory obligation under the contract which is the primary security, and it matters not in what way the obligation is executory (*British-Italian Corporation v. I.R.C.* [1963] A.C. 211).

(20) “Security” (s.1(1), Courts (Emergency Powers) Act 1914 (c. 78)): see *Foster v. Barnard* [1916] 1 K.B. 632.

(21) “Enforcing security” (s.1(4), Increase of Rent and Mortgage Interest (War Restrictions) Act 1915 (c. 97)): see *Martin v. Watson & Egan* [1919] 2 Ir. R. 332.

(22) (Gas Act 1948 (c. 67), s.74(1)) A four per cent redeemable mortgage debenture repayable after 25 years and secured by a charge on the undertaking of a gas

company and its present and future property is a "security" (*Pearl Assurance Co. v. West Midlands Gas Board* [1950] 2 All E.R. 844).

"Debt on a security," see DEBT.

See APPROVED SECURITIES; CHARGE; FURTHER SECURITY; GOOD SECURITY; HERITABLE; LIEN; MARKETABLE SECURITY; MERGER; MORTGAGE; NEGOTIABLE; PERSONAL SECURITY; REAL SECURITY; SECURED CREDITOR; SECURITY FOR MONEY; SUBSTITUTED; VALUABLE.

SECURITY FOR COSTS. "Security for costs," see R.S.C., Ord. 23.

SECURITY FOR DEBT. (1) A building agreement which forfeits to the landlord the materials which may be brought on the land on breach by the builder of his obligations, is not a LICENCE to take possession of chattels as "security for any debt," and therefore is not a bill of sale requiring registration under s.4, Bills of Sale Act 1878 (41 & 42 Vict., c. 31) (*Brown v. Bateman* L.R. 2 C.P. 272; *Blake v. Izard* 16 W.R. 108; *Ex p. Newitt Re Garrud* 16 Ch. D. 522; *Reeves v. Barlow* 11 Q.B.D. 610; 12 *ibid.* 436). See hereon *Ex p. Jay Re Harrison* 14 Ch. D. 19; *Re Yates Batcheldor v. Yates* 38 Ch. D. 112; *Climpson v. Coles* 23 Q.B.D. 465, cited LICENSE; AUTHORITY OR LICENSE. But see *Church v. Sage* 67 L.T. 800.

(2) An assignment of "all book and other debts, and all securities for such debts"; held, not to pass an honoured cheque, uncashed at the date of the assignment, which had been given for a debt which, if unpaid, would have passed (*Hadley v. Hadley* [1898] 2 Ch. 680, cited PAYMENT).

SECURITY FOR MONEY. (1) Mortgages are "securities for money" (*Dicks v. Lambert* 4 Ves. 725; *Ogle v. Knipe* L.R. 8 Eq. 434). So, a bequest of "securities for money" will prima facie pass stock in the funds (*Bescoby v. Pack* 2 L.J.O.S. Ch. 17); but not bank stock (*ibid.*; *Ogle v. Knipe* *sup.*, which case was considered in *Re Rayner* [1904] 1 Ch. 176, cited SECURITY, and *Re Hutchinson* 88 L.J. Ch. 352, cited SECURITIES; *Re Maitland* 74 L.T. 274); nor shares in a company (*Hudleston v. Gouldsbury* 10 Bea. 547; *Re Maitland* *sup.*; *M'Donnell v. Morrow* 23 L.R. Ir. 591; but see *Re Rayner* *sup.*); nor an unpaid legacy (*Re Mason* 34 L.J. Ch. 603). Such a bequest will pass a vendor's lien for unpaid purchase-money (*Callow v. Callow* 42 Ch. D. 550; but see *Goold v. Teague* 32 L.T.O.S. 251; but see this last case disapproved, Sug. V. & P. (14th ed.) 684; Dart (6th ed.), 827, n.). So it will pass a life policy (*Lawrance v. Galsworthy* 3 Jur. N.S. 1049); also bonds (*Dicks v. Lambert* *sup.*; *Mainland v. Upjohn* 41 Ch. D. 142), and bills of exchange, promissory notes, and cheques (*Barry v. Harding* 1 J. & La. T. 475); but not bank notes, for they are money (*Southcot v. Watson* 3 Atk. 233). It would not pass money merely evidenced as due by an I.O.U. (*Barry v. Harding* *sup.*); nor a sum shown to be due by a banker's deposit note (*Hopkins v. Abbott* L.R. 19 Eq. 222; cp. *Re Price* [1905] 2 Ch. 55, cited INVESTMENTS); still less a mere debt (*Re Mason* 34 L.J. Ch. 603); but it would seem that money due on a judgment would pass (*West Ham v. Ovens* L.R. 8 Ex. 37). The phrase does not include insurance policy moneys (*Re Lilly's Will Trusts* [1948] 2 All E.R. 906). See hereon Wms. Exs. (13th ed.) 631.

(2) A bequest of "all securities for money standing invested in my name" includes mortgage bonds, India stock, perpetual debenture or preference stocks, and ordinary shares in a company (*Re Johnson* 89 L.T. 84; affirmed, 89 L.T. 520; distinguished, *Re Hutchinson* *sup.*).

(3) A bequest of "securities for money," prior to the Conveyancing Act 1881 (c. 41), if controlled by context, passed the legal estate in mortgaged hereditaments

(2 Jarm. (7th ed.) 1272; Wms. Exs. (13th ed.) 631, Lewin (10th ed.), 244; *Rippen v. Priest* 32 L.J.C.P. 65, cited MORTGAGE); but see s.30 of that Act as regards testators dying after December 31, 1881.

(4) "Securities for money" (s.12, Judgments Act 1838 (c. 110)) included an execution debtor's life policy (*Stokoe v. Cowan* 30 L.J. Ch. 882, but this case was not followed in Ireland, *Alleyne v. Darcy* 5 Ir. Ch. Rep. 55; *Re Sargeant* 7 L.R. Ir. 66); it is doubtful whether this phrase included exchequer bills (*Ex p. Chaplin* 3 Y. & C. 397). See further SECURITIES.

(5) "Security for the payment of money" (s.3, Bills of Sale Act 1882 (c. 43)) is made "whenever the grantor binds himself to pay money to the grantee, whatever may be the reason" (*per* Esher M.R., *Hughes v. Little* 18 Q.B.D. 32). See further *Manchester, Sheffield & Lincolnshire Railway v. North Central Wagon Co.* 13 App. Ca. 554.

(6) "Security for payment of money" (s.1, Carriers Act 1830 (c. 68)) did not include an incomplete bill of exchange (*Stoessiger v. South Eastern Railway* 23 L.J.Q.B. 293; see further *McCall v. Taylor* 34 L.J.C.P. 365).

(7) Generally, an incomplete bill of exchange is not a security for money or for payment of money (*R. v. Hart* 6 C. & P. 106; *Goldsmid v. Hampton* 5 C.B.N.S. 94); but where acceptances were placed in an agent's hands which needed only his own name as drawer to make them complete, it was held that they were, in his hands, "securities for the payment of money" within s.75, Larceny Act 1861 (c. 96) (*R. v. Bowerman* [1891] 1 Q.B. 112).

(8) "Bond, covenant, or instrument," "being the only, or principal, or primary security" for money, Stamp Act 1891 (c. 39), Sched. 1: see INSTRUMENT; *United Realization Co. v. Inland Revenue Commissioners* [1899] 1 Q.B. 361.

(9) In *Stirling v. John* [1923] 1 K.B. 557, it was held that post-dated cheques given in repayments of a loan are "security for money" within the meaning of Moneylenders Act, there being nothing in the words of the Acts to confine the term "security" to a document which gives a charge on some property.

See MONEY; SECURITY.

SEDITION. Sedition is the attempt "to bring into hatred or contempt the person of" the reigning monarch, "or the Government and constitution of the United Kingdom as by law established, or either House of Parliament or the administration of justice, or to excite His Majesty's subjects to attempt otherwise than by lawful means the alteration of any matter in Church or State by law established" (s.1, Criminal Libel Act 1819 (60 Geo. 3 and 1 Geo. 4, c. 8)); "or to incite any person to commit any crime in disturbance of the peace, or to raise discontent or disaffection amongst His Majesty's subjects, or to promote feelings of ill-will and hostility between different classes of such subjects" (Stephen Cr. (9th ed.) 92). See hereon *R. v. Lambert* 2 Camp. 398; *R. v. Vincent* 9 C. & P. 91; Arch. Cr. (32nd ed.) 1142 *et seq.*

SEDUCTION. (1) Seduction of a wife gave rise at common law to the action for criminal conversation (3 Bl. Com. 139, 140); but that action was abolished by the Matrimonial Causes Act 1857 (c. 85), s.59, and by s.33, *ibid.* a husband might, in a matrimonial cause, claim damages from an adulterer.

(2) As to the sense in which the word "seduction" is used in s.17, Children Act 1908 (c. 67), see *R. v. Moon* [1910] 1 K.B. 818; *R. v. Chainey* [1914] 1 K.B. 137.

Cp. ABDUCTION. See SERVANT.

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SEE. See DIOCESE.

SEE BACK. “See back,” on the face of a railway cloak room ticket and printed thereon in such a way as to give reasonably sufficient intimation that there are conditions on the back (which is a question for the jury), gives to the person taking it notice of the conditions on the back of it, under which the article is accepted for custody (*Parker v. South Eastern Railway* 2 C.P.D. 416); and it follows that a similar notification on any other ticket would charge the person taking it with notice of the conditions on its back. But the “see back,” or “see over,” must not be in small type (*per* Wright J., *Great Northern Railway v. Palmer* [1895] 1 Q.B. 862). The ticket must not be folded up so that the intimation is not visible unless the ticket is opened and read (*Richardson v. Rowntree* [1894] A.C. 217). See further *Stirling v. London & South Western Railway* 12 T.L.R. 69; *Kent v. Midland Railway* L.R. 10 Q.B. 1.

SEE FIT. See THINK FIT.

SEED. See BLOOD.

SEEK. “Seek a livelihood”: see LIVELIHOOD.

“Seeks only”: see ONLY.

SEEM FIT. See THINK FIT.

SEEM MEET. A power to justices “to make such order thereon as to them shall seem meet” (s.44, Highway Act 1835 (c. 50)) did not authorise an order for illegal charges (*Barton v. Piggott* L.R. 10 Q.B. 86). See further THINK FIT.

SEIGNIOR. The lord of a manor (Cowel): “seignior in grosse” “is a lord, but of no manor, and therefore can keep no court” (*ibid.*); “seignory,” a manor or lordship (*ibid.*). See further GROSS.

SEIZE. See SEIZURE.

SEIZED. (1) This word, in its relation to real estate, is “one of the most technical words in our law—a word that has no meaning except technical. It has not got into vernacular use that I am aware of” (*per* James L.J., *Leach v. Jay* 47 L.J. Ch. 877; see further *Kilwick v. Maidman* 1 Burr. 107).

(2) “‘Seisin,’ or *seison*, is common aswel to the English as to the French, and signifies in the common law possession, whereof *seisina* a Latin word is made, and *seisire*, a verbe” (Co. Litt. 153 a); actual entry is, generally speaking, necessary to make a seizin (2 Bl. Com. 209; ENTITLED; Co. Litt. 29 a, but see the exceptions there stated and Hargrave’s note thereon, also Co. Litt. 31 a. See also Cowel, *Seisin*). Therefore, a devise of “all real estate of which I may die seized” will not pass real estate to which the testator is entitled, but of which he has not acquired the actual possession (*Leach v. Jay* 9 Ch. D. 42). See further *Re Huddleston* [1894] 3 Ch. 595; ACTUAL SEIZIN. See further *Parks v. Hegan* [1903] 2 Ir. R. 643, in which case Barton J., said: “‘seizin’ is a mutable and elastic word, used sometimes in a general, and sometimes in a special, sense”; but, generally, “it involves the idea of

actual, corporeal, possession and enjoyment (by the person in question, or some person on his or her behalf), as contrasted with mere right to possession.” In *Phillips v. Phillips* 31 L.J. Ch. 325), Westbury C., speaks of a person being “seized of an equitable estate.” See further PER MY ET PER TOUT.

(3) But though “seized” is a strong technical expression and has its proper relation only to realty, yet if it be the only word relating to realty in a testamentary gift the other expressions of which relate to personalty, it will not be sufficient to pass realty (*Jones v. Robinson* 3 C.P.D. 344).

(4) A gift of all freehold hereditaments in A of which testator was “seized or possessed” under a specified settlement; held to pass a share in the proceeds of sale of freeholds in A to which share (but not to any freeholds) the testator was entitled under the settlement (*Re Lowman* [1895] 2 Ch. 348).

(5) A recital that a person is “seized of or otherwise well entitled to” a property, does not operate as an estoppel that he is seized of the legal estate (*Heath v. Creaklock* 10 Ch. 22); cp. FACT; ENTITLED. See further *Re Wallis and Groult* [1906] 2 Ch. 206, cited FACT.

(6) It was held that a testator does not die seized of copyhold premises if without being admitted tenant, he is in receipt of the rents and profits and the admitted tenant has declared that he stood possessed of the premises in trust for the testator and his heirs and assigns (see *Re Norman* 58 S.J. 706).

(7) An allegation in a pleading that a person was “seized” of property, is ambiguous, but after verdict to that effect, it is a sufficient allegation of a seizin in fee (*Harris v. Beavan* 4 Bing. 646).

(8) An allegation of a seizin in fee virtually includes an occupation of the property, unless the contrary be shown (*Bullard v. Harrison* 4 M. & S. 387, 392), and, certainly, does not imply that the property was not then under lease (*Johnson v. Faulkner* 2 Q.B. 925).

(9) As regards Lunacy Acts and Trustee Acts, “seized” was applicable to or included “any vested estate for life or of a greater description, and shall extend to estates at law and in equity, in possession or in futurity, in any lands” (Trustee Act 1850 (c. 60), s.2; Lunacy Act 1891 (c. 65), s.28).

(10) “Seized in fee simple,” in the exception to the Grants of Life Annuities Act 1776 (c. 26), for the registration of annuities, included a tenant for life with a general power of appointment (*Halsey v. Hales* 7 T.R. 194).

(11) “Seized of the freehold and inheritance”: see *Malmesbury v. Malmesbury* 31 Bea. 407.

(12) “Seized of or entitled in fee” (s.17, Infants Property Act 1830 (c. 65)): see *Re Clark* 1 Ch. 292.

(13) Meat was not “seized” within ss.116, 117, Public Health Act 1875 (c. 55), if, having been purchased, it was with the consent of the purchaser taken by an inspector of nuisances to a justice for condemnation (*Vinter v. Hind* 10 Q.B.D. 63; but see *Salt v. Tomlinson* [1911] 2 K.B. 391. So, as to an article “seized” (s.47, Public Health (London) Act 1891 (c. 76)): see *per* Hawkins J., *R. v. Dennis* [1894] 2 Q.B. 458. See further *Billing v. Prebble* 66 L.J.Q.B. 180, cited BELONG.

Covenant “to stand seized”: see 4 Cru. Dig. 106–112.

See ENTITLED; SEIZIN; SEIZURE.

SEIZED JOINTLY. This phrase in s.10, Trustee Act 1850 (c. 60), was not to be construed as referring only to a strictly legal joint tenancy, but would include parceners (*Re Greenwood* 27 Ch. D. 359).

SEIZIN. (1) “Instrument of seizin”: see *Eglinton Trustees v. Inland Revenue Commissioners* 34 L.J. Ex. 225. In that case Pollock C.B., said the Scotch equivalent for “seizin” is “sasine” (3 H. & C. 887).

(2) The seisin of chattels; see 1 L.Q.R. 324; the mystery of seisin, 2 *ibid.* 481; the beatitude of seisin, 4 *ibid.* 24, 286.

See SEIZED; ACTUAL SEIZIN; PRIMER SEISIN; CAPTION.

SEIZURE. (1) The ordinary and natural meaning of “seizure” is a forcible taking possession (*per* Cave J., *Johnston v. Hogg* 10 Q.B.D. 432. See also *Vinter v. Hind* 10 Q.B.D. 63; but see on this last case *Mallinson v. Carr* [1891] 1 Q.B. 48, cited KNOWINGLY).

(2) Seizure of part of the goods in the house by virtue of a *feri facias* in the name of the whole is a good seizure of all (*per* Holt C.J., *Cole v. Davis* 1 Raym. Ld. 724. See also *Gladstone v. Padwick* L.R. 6 Ex. 203).

(3) An execution against lands was “completed by seizure,” within s.45(2), Bankruptcy Act 1883 (c. 52), as soon as the sheriff had delivered the lands to the execution creditor (*Re Hobson* 33 Ch. D. 493; see Act of 1914 (c. 59), s.40(2); *cp.* DELIVERED IN EXECUTION).

(4) In a warranty by owners of a ship against “capture and seizure,” in a marine insurance, the word “seizure” has its ordinary and natural meaning and is not a term of art, and includes the forcible taking possession of a vessel and abandoning her as soon as the cargo has been plundered; “seizure” is not equivalent to, but is less exigent than, “capture,” as the latter word involves the idea of keeping what has been seized (*Johnston v. Hogg* *sup.*, and *dicta* there cited). “Seizure,” even in this connection, is not confined to a belligerent, hostile, or wrongful seizure (*Powell v. Hyde* 25 L.J.Q.B. 65; *Kleinwort v. Shepard* 28 L.J.Q.B. 147; *Cory v. Burr* 8 App. Ca. 393). See further *Robinson Gold-Mining C. v. Alliance Assurance* [1902] 2 K.B. 489, affirmed in H.L. [1904] A.C. 359; see also *Miller v. Law Accident Insurance* [1903] 1 K.B. 712, cited RESTRAINTS OF KINGS; WAR; see also CAPTURE.

(5) It has been said in America that a “capture” is a taking by military power; a “seizure” a taking by civil authority (*United States v. Athens Armory* 2 Abb. 137).

(6) *Quaere*: whether the placing of an armed guard in a neutral ship in the course of the exercise of the Crown’s belligerent right of visit and search constitutes a “seizure” (*The Mim* [1947] P. 115).

See ARREST; ACTUAL; EXECUTED; QUOUSQUE; SEIZED.

SELBORNE’S (Lord) ACT. Powers of Appointment Act 1874 (c. 37).

See further PALMER ACT.

SELDA. Cowel gives these various meanings to “selda”: a seat or stool; a window; a shop, shed, or stall; and says that “selda, also in Doomsday signifies a wood of sallows, willows, and withyes ” See further SALIVA.

SELECT. (1) As to the right of a devisee or legatee to select which property he will take where the testator had more than one property answering the description of the gift, or more property of the kind described than the gift exhausts, see *Jacques v. Chambers* 2 Coll. 435; *Tapley v. Eagleton* 12 Ch. D. 683, criticising *Richardson v. Watson* 2 L.J.K.B. 134, cited CLOSE, and following *Duckmanton v. Duckmanton* 29 L.J. Ex. 132; *Re Cheadle* [1900] 2 Ch. 620, distinguishing *Tapley v. Eagleton* *sup.*, and approving *Asten v. Asten* [1894] 3 Ch. 260; *O’Donnell v. Welsh* [1903] 1 Ir. R. 115.

(2) A bequest for such charitable institutions and schemes . . . as the trustees may select . . . : see *Dick v. Audsley* [1908] A.C. 347; see further *Re Garrard* 92 L.T. 779, cited SUCCESSORS.

(3) A bequest of such furniture, etc., in a certain house as the legatee should select was held to be unlimited as to quantum and to justify a claim to the whole of the furniture (*Re Wavertree* [1933] Ch. 837).

Power to select: see RELATIONS.

Cp. ELECTION. See APPROPRIATE.

SELF. (1) Self defence: see 3 Bl. Com. 3, 4, *ibid.* 183; Steph. Cr. (9th ed.) Art. 305. See also *R. v. Julien* [1969] 1 W.L.R. 839; *Palmer (Sigismund) v. R.* [1971] A.C. 814. "Son assault demesne": see DEMESNE.

(2) "Self-employed" (National Insurance Act 1946 (c. 67), s.1(2) (a) (b)): a music hall artist has been held to be a 'self-employed person' (*Gould v. Minister of National Insurance* [1951] 1 K.B. 731); but in Scotland a variety artist was held to be an employed person and not "self employed" (*Stagecraft, Ltd. v. Minister of National Insurance* [1952] S.L.T. 309). "Self-employed." Stat. Def., Social Security Act 1975 (c. 14), s.2; Supplementary Benefits Act 1976 (c. 71), s.6.

"For firm and self": see FOR.

Self murder: see SUICIDE. 4 Bl. Com. 189.

SELION. "By the grant of a selion of land, *selio terræ*, a ridge of land which containeth no certainty, for some be greater and some be lesser; and by the grant *de unâ porcâ*, a ridge doth passe. *Selio* is derived of the French word *sellon*, for a ridge" (Co. Litt. 5 b; see also *Termes de la Ley*; Cowel). See PORCA TERRÆ; BUTT.

SELL. See ASSIGN; ATTEMPT; CONVEY; MORTGAGE; PARTITION; SALE; SELLER; VEND.

"Sells . . . any food" (Food and Drug Act 1955 (c. 16), ss.2(1), 8(1) (a)) see FOOD.

SELLER. (1) "A man cannot be both buyer and seller, or lessor and lessee" (*per* Farwell J., *Boyce v. Edbrooke* [1903] 1 Ch. 843). See SALE.

(2) Sale of Goods Act 1893 (c. 71), s.62(1), "seller" means a person who sells or agrees to sell goods; the "seller" of goods under Pt. 4 of that Act, "includes any person who is in the position of a seller, *e.g.* an agent of the seller, to whom the bill of lading has been indorsed, or a consignor or agent who has himself paid, or is directly responsible for, the price" (s.38(2)). See SCIENTER; UNPAID SELLER; cp. *Walker v. Linton* 30 Sc. L.R. 40, cited PURCHASED.

(3) The person who was the "seller" of poison within s.17, Pharmacy Act 1868 (c. 121), was the person who kept the shop, or actually conducted the business of the place, where the sale was transacted, even though he only sold the article on commission for another person, living elsewhere and having no control over the shop or place (*Templeman v. Trafford* 8 Q.B.D. 397); under s.15 of the Pharmacy and Poisons Act 1933 (c. 25), which was repeated by the Poisons Act 1972 (c. 66), the "seller" included a shopkeeper's assistant who performed the physical act of transfer (*Pharmaceutical Society v. Wheeldon* 24 Q.B.D. 683; *Tomlinson v. Bembridge* 31 Sc. L.R. 683; see further *Pharmaceutical Society v. London & Provident Supply Association* 5 App. Ca. 857; cited PERSON). But if a florist received an order for a poison, *e.g.* a weed-killer, which order he merely sent on to the manufacturer, receiving from the latter a commission on the order, the florist was not the "seller"

within s.15 (*Pharmaceutical Society v. White* [1900] 1 Q.B. 454, affirmed [1901] 1 K.B. 601).

(4) By s.2, Poisons and Pharmacy Act 1908 (c. 55), a licence might be granted to a person other than a registered pharmaceutical chemist to sell poisonous substances for agricultural and horticultural purposes, but such licence was to the licensee himself, and did not cover an unlicensed shop assistant (*Pharmaceutical Society v. Nash* [1911] 1 K.B. 520).

(5) So, under the Sale of Food and Drugs Act 1875 (c. 63), s.6, the person who was the “seller” of an article “not of the nature, substance, and quality,” demanded, might be a servant of the tradesman, although his subordinate position precluded him from having been the person who had purchased the article for sale and whereby (possibly) he was deprived of the defence furnished by s.25 (*Hotchin v. Hindmarsh* [1891] 2 Q.B. 181; *Brown v. Foot* 61 L.J.M.C. 110, cited KNOWINGLY; see further WRITTEN WARRANTY). See NATURE; REPRESENT. But cp. *Williamson v. Norris* 68 L.J.Q.B. 31, on s.3, Licensing Act 1872 (c. 94), on which see *Peckover v. Defries* 23 T.L.R. 20.

(6) “Buyer and seller” (Customs and Excise Act 1952 (c. 44), Sched. 6, para. 1). These are national persons with no personal characteristics or attributes, except a deemed desire by the seller to take the goods into the open market and there sell them for the highest price obtainable (*Salomon v. Commissioners of Customs and Excise* [1966] 3 W.L.R. 36).

Stat. Def., Hire-Purchase Act 1964 (c. 53), Sched. 1, para. 6; Hire-Purchase Act 1965 (c. 66), s.58; Sale of Goods Act 1979 (c. 54), ss.38(2), 61.

Cp. VENDOR.

SELLING. Selling price (Housing, etc., Act 1923 (c. 24), s.2) “means the maximum price at which the builder who has erected the house with the subsidy . . . will be entitled to sell the house” (*per* Maugham J., in *Burnham-on-Sea Urban District Council v. Channing & Osmond* [1933] Ch. 583, 589).

“Selling by retail”; “selling by wholesale.” Stat. Def., Purchase Tax Act 1963 (c. 9), s.40(1).

SELWYN’S ACT. Probate Duty Act 1859 (22 & 23 Vict., c. 36).

SEMBLE. It seems.

SEND. (1) “A threatening letter is ‘sent’ when it is dropped in the way of the person for whom it is destined, so that he may pick it up (*R. v. Jepson*, *R. v. Lloyd* 2 East P.C. 1115, 1122; *R. v. Wagstaff* Russ. & Ry. 398); or is affixed in some place where he would be likely to see it (*R. v. Williams* 1 Cox C.C. 16); or is placed on a public road near his house, so that it may, however indirectly, reach him, which it eventually does after passing through several hands (*R. v. Grimwade* 1 Den. 30; see also *R. v. Jones* 5 Cox C.C. 226); although in none of these cases would the paper be popularly said to have been ‘sent’ ” (Maxwell (10th ed.), 278). But to “send” a threatening letter within the Black Act did not include its being taken by the writer (*R. v. Hammond Leach*, 444).

(2) Notices of chargeability or of appeal were authorised to be sent “by post or otherwise” (Poor Law (Amendment) Acts 1834 (c. 76), s.79, and 1851 (c. 105), s.10); they were, accordingly, “sent,” within s.9, Poor Law Procedure Act 1848 (c. 31), on the day when in the ordinary course of post they ought to have been delivered (*R. v. Slawstone* 18 Q.B. 388; *R. v. Richmond* 27 L.J.M.C. 197).

(3) "Send or cause to be sent" (Betting and Loans (Infants) Act 1892 (c. 4), s.2; Moneylenders Act 1900 (c. 51), s.5): see *Director of Public Prosecutions v. Witkowski* 22 Cox C.C. 425. See Moneylenders Act 1927 (c. 21), s.5.

(4) "Send out, deliver, remove, or receive" spirits exceeding the quantity of 1 gallon without a permit (ss.105, 107, Spirits Act 1880 (c. 24)): see *Leese v. Jennings* 79 L.T. 300.

(5) "Sending" does not involve receipt (*per* Lord Uthwatt in *Tankexpress A/S v. Compagnie Financiere Belges des Petroles S.A.* [1949] A.C. 76).

(6) "Sent to the purchaser within seven days," in s.20(1), Sale of Food and Drugs Act 1899 (c. 51), meant posted within that period, although the communication might not reach the sendee until the seven days had expired: see *Retail Dairy Co. v. Clarke* [1912] 2 K.B. 388.

(7) A notice of prosecution was "sent" within s.21 of the Road Traffic Act 1930 (c. 43), in the proper time, even if it was not received within the time limit (*Stanley v. Thomas* [1939] 2 K.B. 462).

(8) A second statutory copy of a hire-purchase agreement is "sent" within the meaning of s.10(2) of the Hire-Purchase Act 1965 (c. 66) if it is just handed over (*Skuce (V.L.) v. Cooper* [1975] 1 W.L.R. 593).

Stat. Def., Unsolicited Goods and Services Act 1971 (c. 30), s.6.

"Sender." Stat. Def., Unsolicited Goods and Services Act 1971 (c. 30), ss.1(6).

SENTENCE. (1) A covenant in a charterparty to employ a captured ship "as soon as sentence of condemnation shall have passed," connotes that the sentence must be a legal one (*Unwin v. Wolseley* 1 T.R. 674).

(2) "Sentence" is defined in Criminal Appeal Act 1907 (c. 23), s.21 as amended by Criminal Justice Act 1967 (c. 80), Sched. 4, para. 8, on which see *R. v. Jones* [1929] 1 K.B. 211. It includes any order of the court made on conviction; it does not include a sentence of imprisonment for failure to surrender on bail (*R. v. Harman* [1959] 2 Q.B. 134).

(3) "Serving a sentence of imprisonment" (Criminal Justice Act 1961 (c. 39), s.3(1)). A person who has been released from prison on parole was held still to be "serving a sentence of imprisonment" within the meaning of this section (*R. v. Mellor* [1981] 1 W.L.R. 1044). But this case was not followed in *R. v. Orpwood* [1981] 1 W.L.R. 1048 where it was held that a young person released on licence is not "serving a sentence of imprisonment".

(4) "Sentence of imprisonment" (Criminal Justice Act 1967 (c. 80), s.37(4) (c) (ii)) does not include a sentence of corrective training (*R. v. Newton* [1973] 1 W.L.R. 233).

(5) "Sentence" (Criminal Appeal Act 1968 (c. 19), ss.9, 50(1) as amended by Criminal Justice Act 1982 (c. 48), s.66). A probation order is a "sentence" within the meaning of this section (*R. v. Tucker* [1974] 1 W.L.R. 615). An order to pay part or all of the prosecution costs made after conviction is also a "sentence" against which appeal may be made to the Court of Appeal (*R. v. Hayden* [1975] 1 W.L.R. 852). The term "sentence" in these sections means an order passed on an offender for an offence which that offender has committed (*R. v. Ioannou* [1975] 1 W.L.R. 1297). An order revoking a parole licence is a "sentence" for the purpose of s.9 (*R. v. Welch* [1982] 1 W.L.R. 976), as also is an order for binding over contingent on a conviction (*R. v. Williams (Carl)* [1982] 1 W.L.R. 1398). A criminal bankruptcy order is a "sentence" for the purposes of the 1968 Act (*R. v. Cain* [1984] 3 W.L.R. 393).

(6) An order for forfeiture of money or goods under s.27 of the Misuse of Drugs

Act 1971 (c. 38) is a "sentence" within the meaning of s.57 of the Courts Act 1971 (c. 23), and it cannot be imposed after the period specified in s.11(2) (*R. v. Menocal* [1979] 2 W.L.R. 876).

Stat. Def., Criminal Appeal Act 1907 (c. 23), s.21 as amended by Criminal Justice Act 1967 (c. 80), Sched. 4, para. 8; Criminal Justice Act 1967 (c. 80), s.74(12); Criminal Appeal Act 1968 (c. 19), s.50 as amended by the Criminal Justice Act 1982 (c. 48), s.66; Courts Act 1971 (c. 23), s.57; Immigration Act 1971 (c. 77), s.7(4); Criminal Justice Act 1972 (c. 71), s.66(2); Costs in Criminal Cases Act 1973 (c. 14), s.3(7); Rehabilitation of Offenders Act 1974 (c. 53), s.1; Magistrates' Courts Act 1980 (c. 43), ss.108, 150; Supreme Court Act 1981 (c. 54), ss.47, 48.

See DEFINITIVE.

SENTICETUM. See RONCARIA.

SEPARATE. (1) The condition of an annuity in a separation deed provided that the annuity be payable during the joint lives of the husband and wife so long as they should "live separate"; held, that an occasional cohabitation was not a breach of such latter part of the condition; to do that the evidence must show a joint intention of continuing to live together (*Robinson v. Robinson* 89 L.T. 119; *Rowell v. Rowell* [1900] 1 Q.B. 9).

(2) Without such a condition, a real resumption of cohabitation may put an end to a separation deed, but not destroy a cause of action already accrued thereunder (*Macan v. Macan* 70 L.J.K.B. 90; cp. *Williams v. Williams* [1904] P. 145, cited COHABITATION). The death of the husband puts an end to an annuity which he has covenanted to pay his wife so long as she continued "to live separate and apart" from him, for "she cannot be said to be doing that when he is dead" (*per Kekewich J., Re Gilling* 74 L.J. Ch. 335, distinguishing *Charlesworth v. Holt* L.R. 9 Ex. 38). Cp. *Re Spark* [1904] 1 Ch. 451, cited SEPARATION. See also *Hyman v. Hyman* [1929] A.C. 601; *May v. May* [1929] W.N. 180.

(3) An agreement by a husband to maintain his wife during their joint lives "if they shall so long live separate" is not a bar to a petition on the grounds of desertion as being an agreement by the wife that the husband shall live apart from her (*Crabtree v. Crabtree* [1953] 1 W.L.R. 708).

(4) Living apart: see *Nugent-Head v. Jacob* [1948] A.C. 321, cited LIVING WITH. See LIVING APART; NEGLECT; SEPARATELY; cp. ASSOCIATE.

SEPARATE BUSINESS. Of a wife: see SEPARATELY.

SEPARATE COVENANT. Where A covenants with B "and as a separate covenant" with C to do or refrain from doing a certain thing, "separate" is a technical word equivalent to the technical word "several," and clearly connotes a several obligation (*Keightley v. Watson* 3 Ex. 716, 720, 721); but, *semble*, "as a distinct covenant" is not such a technical phrase (*Hopkinson v. Lee* 6 Q.B. 964; but see this last case considered in *Keightley v. Watson*).

See COVENANT; JOINTLY AND SEVERALLY; SEVERAL COVENANT.

SEPARATE DWELLING. (1) "The use of the words 'let as a separate dwelling' in s.12(2) [of the Increase of Rent and Mortgage Interest (Restrictions) Act 1920 (c. 17)] shows that some tenants of dwellings are to be protected and others not. . . . If a dividing line is to be drawn one would expect it to exclude tenants who have a right to the daily use of a living room simultaneously with members of

another household, and I think that the words 'let as a separate dwelling' do clearly exclude such tenants" (*per* Lord Reid in *Goodrich v. Paisner* [1957] A.C. 65).

(2) Where premises consisting of a basement, a shop and living accommodation above with a separate door from the street were let under a single lease, they were let as a "separate dwelling" within the meaning of s.16(1) of the Rent and Mortgage Interest (Restrictions) Act 1933 (c. 32) (*Levermore v. Jobey* [1956] 1 W.L.R. 697). But a single room, even if let under a separate agreement to the tenant of a flat across the corridor, cannot be a "separate dwelling" within the meaning of the section (*Metropolitan Properties v. Barder* [1968] 1 W.L.R. 286).

(3) "Let as a separate dwelling" (Rent Act 1977 (c. 42), s.1). A house let by the owner to an Oxford college so as to enable the college to sublet five of the rooms, each separately equipped as a bedroom, study and sittingroom, to five students, was not let to the college as a "separate dwelling" within the meaning of this section (*St. Catherine's College v. Dorling* [1979] 3 All E.R. 250). A penthouse (comprising a maisonette and a separate staff flat), the subject of a long lease, was held to be "let as a separate dwelling" within the meaning of this section, notwithstanding that, at the end of the term, the maisonette and flat were occupied by different parties (*Regalian Securities v. Ramsden* [1981] 2 All E.R. 65).

(4) "Separate dwelling-houses" (Town and Country Planning Act 1962 (c. 38), s.12(3)) must be completely separate and self contained, and multiple occupation by different families is not of itself enough (*Ealing Corporation v. Ryan* [1965] 2 Q.B. 486).

(5) Where at the end of a long lease of a house an assignee is in occupation of part, with the remainder empty, he is protected by Pt. I of the Landlord and Tenant Act 1954 (c. 56) as a "separate dwelling" within the meaning of s.22(3) (*Haines v. Herbert* [1963] 1 W.L.R. 1401). But not if the rest is sublet (*Crown Lodge (Surbiton) Investments v. Nalecz* [1967] 1 W.L.R. 647).

SEPARATE ESTATE. See SEPARATE PROPERTY; SEPARATE USE.

SEPARATE FACTORY. (Factories Act 1937 (c. 67), s.151(6), Factories Act 1961 (c. 34), s.175(4)). Work done in an engineering shop where margarine-making machinery is tested is incidental to the manufacture of margarine so that the shop is not a "separate factory" (*Thurogood v. Van den Berghs and Jurgens* [1951] 2 K.B. 537).

SEPARATE FARES. (1) A vehicle carrying passengers and their goods, each passenger paying an inclusive fare for himself and his goods, was "a vehicle carrying passengers for hire or reward at separate fares" within s.61(1)(b) of the Road Traffic Act 1930 (c. 43), and was therefore an "express vehicle" (*Drew v. Dingle* [1934] 1 K.B. 187).

(2) The owner of a minibus, who contracts with another person to take, on a daily basis, her and her friends home from work at a fixed charge regardless of numbers, is guilty of carrying passengers "at separate fares" within the meaning of s.118(3)(b) of the Road Traffic Act 1960 (c. 16), even though it is the hirer who collects and retains the individual fares (*Wurzel v. Addison* [1965] 2 Q.B. 131).

SEPARATE FLATS. See SEPARATE DWELLING.

SEPARATE HEREDITAMENT. See HEREDITAMENT.

SEPARATE HOUSES. See SEPARATE DWELLING.

SEPARATE INSURANCE. “Each craft to be deemed a separate insurance”: see *South British Insurance v. Da Costa* [1906] 1 K.B. 459, cited EXCESS.

SEPARATE MAINTENANCE. A provision for a married woman for “separate maintenance” may make it for her separate use (*Re Tharp* 3 P.D. 76).

SEPARATE MEETING. A meeting may be a “separate meeting” of a class notwithstanding that members of another class are present, provided they do not vote (*Carruther v. Imperial Chemical Industries Ltd.* [1937] A.C. 707).

SEPARATE OCCUPATION. Separate occupation, entitling a person to be separately rated, depends on his occupation, and has nothing to do with structural division (*Allchurch v. Hendon* [1891] 2 Q.B. 436). In that case, Esher M.R. said, “‘structural division’ is a phrase invented by the judges at a time when, in the statute of Elizabeth as to the poor rate and in the Franchise Acts, they were labouring to determine what was to be an occupation which (in one case) would give a liability to be rated and (in the other) the right to the franchise. The phrase was in use for a long time,” but now “is an exploded phrase and an exploded doctrine for all purposes whatever.” See HOUSE; OCCUPATION.

SEPARATE PROCEEDINGS. See PROCEEDINGS.

SEPARATE PROPERTY. (1) “Separate property” (s.7, Married Women’s Property Act 1870 (c. 93)): see *Re Davies* [1897] 2 Ch. 204, cited LESS. A contingent remainder was not such property (*Re Shakespear, Deakin v. Lakin* 30 Ch. D. 169); but a vested remainder was (*Loibl v. Fraser* 37 S.J. 601).

(2) The phrase in s.1, Married Women’s Property Act 1882 (c. 75), did not comprise property over which a married woman had a general power of appointment (*Re Armstrong* 21 Q.B.D. 264; see hereon *Re Roper* 39 Ch. D. 482, but see on this case *per* Lindley M.R., *Re Hughes* [1898] 1 Ch. 529, cited FEME; *Mayd v. Field* 3 Ch. D. 587); nor property subject to a restraint on alienation (*Leak v. Drifffield* 24 Q.B.D. 98; *Braunstein v. Lewis* 64 L.T. 265; *Pelton v. Harrison* [1891] 2 Q.B. 422; see on this last case *Re Wheeler* [1899] 2 Ch. 717).

(3) “Separate property,” in s.1, Married Women’s Property Act 1893 (c. 63), did not comprise property subject to a restraint on alienation, even though the restraint had been removed by the coverture having ceased (*Brown v. Dimpleby* [1904] 1 K.B. 28, approving *Barnett v. Howard* [1900] 2 Q.B. 784). See also *Wood v. Lewis* [1914] 3 K.B. 73; *Re Fieldwick* [1909] 1 Ch. 1, cited DEBT OR LIABILITY.

(4) As to binding separate property by contract, see Act of 1893 which, as from its date, nullified hereon such cases as *Re Shakespear* sup. and *Palliser v. Gurney* 19 Q.B.D. 519.

(5) Alimony was not “separate” property in the sense that it was chargeable by the wife with her debts (*Anderson v. Hay* 7 T.L.R. 113). See JUDGMENT.

(6) “Criminal proceedings for the protection and security” of a wife’s “own separate property” (s.12, Married Women’s Property Act 1882 (c. 75), did not include a prosecution for libel (*R. v. Lord Mayor of London* 16 Q.B.D. 772); but “civil remedies” for such “protection and security” included an action of detinue by the wife against the husband (*Larner v. Larner* [1905] 2 K.B. 539).

(7) An action by a wife against her husband for false imprisonment and malicious prosecution was not “for the protection and security of her own separate property,” even though, in consequence of her husband’s proceedings, she might have

lost an employment; see *Tinkley v. Tinkley* 53 S.J. 242; see also *Ralston v. Ralston* 99 L.J.K.B. 266.

See SEPARATE USE; JOINT TENANCY.

SEPARATE PUBLICATION. See SEPARATELY; PUBLICATION.

SEPARATE USE. (1) A “separate use” was the creation of courts of equity; it is applicable to both real and personal property; its effect is to give a married woman, with respect to the property subject to it, “an independent personal status, and to make her, in equity, a feme sole (see FEME). It is of the essence of the separate use, that the married woman shall be independent of, and free from the control and interference of, her husband. With respect to separate property, the feme overt is, by the form of trust, released and freed from the fetters and disability of coverture, and invested with the rights and powers of a person who is *sui juris*. To every estate and interest held by a person who is *sui juris*, the common law attaches a right of alienation; and accordingly, the right of a feme covert to dispose of her separate estate was recognised and admitted from the beginning until Lord Thurlow devised the clause against anticipation (see *Hulme v. Tenant* 1 Bro. C.C. 16, cited FEME; *Parkes v. White* 11 Ves. 209, 221; see further RESTRAINT ON ALIENATION). It would be contrary to the whole principle of the doctrine of separate use to require the consent or concurrence of the husband in the act or instrument by which the wife’s separate estate is dealt with or disposed of” (*per Westbury C., Taylor v. Meads* 34 L.J. Ch. 207).

(2) “What words create a trust for separate use, has often been a subject of dispute. The principle of construction is stated to be that the marital right is not to be excluded except by expressions which leave no doubt of the intention” (2 Jarm. (4th ed.) 24; see also Elph. 297).

(3) “‘Separate’ is the proper technical word for excluding the marital right; ‘sole’ is not equivalent; and prima facie a devise or bequest direct to a single woman (including the testator’s widow) for her ‘sole’ use will not create a separate estate” (2 Jarm. (4th ed.) 25, n., citing *Gilbert v. Lewis* 32 L.J. Ch. 347; *Lewis v. Mathews* L.R. 2 Eq. 177). See further SOLE; OWN SOLE USE.

(4) But “no particular form of words is necessary in order to vest property in a married woman to her separate use. That intention, though not expressed in terms, may be inferred from the nature of the provisoes annexed to the gift” (*per Brougham C., Stanton v. Hall* 2 Russ. & My. 180).

(5) “Property acquired by a married woman and becoming her separate estate by virtue of the Married Women’s Property Act 1882 (c. 75), is not ‘property settled to her separate use’ within the meaning of the words as used in an exception to a covenant for settling a wife’s future property in a settlement before 1883” (Elph. 296, citing *Re Stonor* 24 Ch. D. 195; see also *Re Whitaker* 34 Ch. D. 227). In a discussion of the lastly cited case (31 S.J. 376, 377), it has been said that “the practical effect of the decision is that the words ‘for her separate use’ should be always added after a gift, limitation, or bequest, to a married woman.” See SEPARATE PROPERTY.

(6) *Semble*, a gift to a married woman for her “separate use” will not take the property out of a covenant to settle (3 Davidson’s Prec. (3rd ed.) 199, 200; *Re Alnutt, Pott v. Brassey* 22 Ch. D. 275; differing from *Re Mainwaring* L.R. 2 Eq. 487; see also *Scholfield v. Spooner* 26 Ch. D. 94).

See OWN USE AND BENEFIT; PARAPHERNALIA; PIN MONEY; RESTRAINT ON ALIENATION; SAVINGS; SOLE USE.

SEPARATELY. (1) A wife might engage in or carry on an employment, trade, or occupation, "separately from her husband" (s.2, Married Women's Property Act 1882 (c. 75)), in the house in which they were living together; "separately" in that connection did not mean "bodily separate" but meant without the husband's interference (*Ashworth v. Outram* 5 Ch. D. 923; *Lovel v. Newton* 4 C.P.D. 7; *Re Dearmer* 53 L.T. 905; as to proof, see *Re Whittaker* 21 Ch. D. 657). So, in order to render a wife subject to the bankruptcy laws (s.1(5), *ibid.*), she had not only to have separate estate but also "carry on a trade separately from her husband," *i.e.* her trade had to be one in which the husband had no share or right of interference (*Re Helsby* 63 L.J.Q.B. 261); but "separately" did not mean that the husband might not help (and help very much) in carrying on the wife's trade (*Re Edwards* 11 T.L.R. 338). It was not carrying on a "trade" within this enactment for a woman to let rooms in her house, she supplying no food to such lodgers (*Re Parkinson* 9 T.L.R. 388). See CARRY ON.

(2) "Separately assigned or charged" (Bills of Sale Act 1878 (c. 31), s.7). See thereon *Re Yates, Batcheldor v. Yates* 38 Ch. D. 112; *Small v. National Provincial Bank* [1894] 1 Ch. 686; *Re Brooke* [1894] 2 Ch. 600. A mortgage, whether of freeholds or leaseholds, which comprises fixtures and which gives the mortgagee power to sell fixtures separately from the land, amounts to a bill of sale as regards the fixtures (*Johns v. Ware* [1899] 1 Ch. 359; *Re Yates* *sup.*).

(3) Lodgings occupied "separately and as sole tenant" Representation of the People Acts. If a man's wife lodged with him, he none the less occupied "separately and as sole tenant" (*Hamilton v. Paton* [1899] W.N. 175).

(4) Book "separately published" (s.2, Copyright Act 1842 (c. 45)) included each one of a series of literary compositions, clearly distinguishable from one another, although published in one volume and under one general title (*Johnson v. Newnes* [1894] 3 Ch. 663, on which see *Lawrence & Bullen v. Aflalo* [1904] A.C. 17). As to what was publishing an essay, etc., "separately or singly," within s.18, *ibid.*, see *Mayhew v. Maxwell* 1 J. & H. 312; see that case and hereon, *Cox v. Land & Water Co.* L.R. 9 Eq. 329, 330; see further *Smith v. Johnson* 33 L.J. Ch. 137; PERIODICAL; PUBLICATION.

(5) Apartments "not separately rated" (s.7, Representation of the People Act 1867 (c. 102)): see *White v. Islington* [1909] 1 K.B. 133, cited OWNER.

See SEPARATE; SEPARATE DWELLING-HOUSE, SEPARATE OCCUPATION.

SEPARATION. (1) "Separation of the crop": see *Black v. Clay* [1894] A.C. 368, cited DETERMINATION.

(2) A settlement of property in a separation deed remains valid notwithstanding reconciliation (*Re Spark* [1904] 1 Ch. 451, following *Ruffles v. Alston* L.R. 19 Eq. 539). Cp. SEPARATE. Periodical sums payable under a separation deed are proveable in the bankruptcy of the husband (*Ex p. Neale* 14 Ch. D. 579); but, it has been said, such bankruptcy does not discharge the husband's liability: see *Victor v. Victor* [1912] 1 K.B. 247.

Allowance during separation: see DURING.

Separation deed: see ALIMONY; COMMENCED; CONDONATION; USUAL.

See JUDICIAL SEPARATION; LIVING APART; SEPARATE; cp. ASSOCIATE.

SEPTUM. "An inclosure, a close; and is so called because it is encompassed *cum sepe et fossa*, with a hedge and a ditch, or, at least, with a hedge" (Cowel); "it signifies any place paled in" (Jacob).

SEPULCHRE. “Sepulture ecclesiastique”: see *Brown v. Montreal Curé* L.R. 6 P.C. 157.

SEQUELAE. “Sequelae,” in Sched. 3 to ss.43–46, Workmen’s Compensation Act 1925 (15 & 16 Geo. 5, c. 84), e.g. “lead poisoning or its sequelae” means a disease which is the consequence—not a possible consequence but the result—of lead poisoning; and if the proof is that the disease might have resulted from lead poisoning, or might have resulted from something else, then a claim under s.8 fails: see *Haylett v. Vigor* 77 L.J.K.B. 1132.

SEQUESTRATION. (1) “‘Sequestration’ is the setting aside of a thing in controversy from the possession of both those that contend for it” (Termes de la Ley); it is voluntary, when both parties consent; necessary, when ordered by a judge (Cowel).

(2) The sequestration of a benefice “is this, that the proceeds of the benefice are taken by an officer appointed by the bishop for the purpose: but, in other respects, the position of the incumbent, except so far as it may be expressly altered by the statute, remains the same” (per Chitty J., *Lawrence v. Edwards* [1891] 1 Ch. 144, cited MINISTER). See further as to the effect of a sequestration of a benefice, *Re Lawrence* [1896] P. 244; *Lawrence v. Adams* 75 L.T. 410; *Pack v. Tarpley* 8 L.J.M.C. 93; Phil. Ecc. Law (2nd ed.) 1003—1012, 1074.

(3) “‘Sequestration’ is a word large enough to apply to all sequestrations” (per North J., *Re Wanzer* 60 L.J. Ch. 494); and as used in s.163, Companies Act 1862 (c. 89), included a Scottish proceeding in sequestration by a landlord against a tenant for future rent (*ibid.* [1891] 1 Ch. 305). An arrest of a vessel by the Admiralty Court was also a “sequestration” within that section (*Re Australian Navigation Co.* L.R. 20 Eq. 325. See Companies Act 1948 (c. 38), s.228.

(4) Sequestration to enforce payment into court or other act: see R.S.C., Ord. 43, rr. 6, 7, now Ord. 45, r. 1, see further *Re Pollard* [1903] 2 K.B. 41.

Sequestrator: see CREDITOR.

SERIAL. (1) See *Johnson v. Newnes* [1894] 3 Ch. 663, cited SEPARATELY; PERIODICAL.

SERIES. (1) “Series of debentures containing any charge,” in s.14(4), Companies Act 1900 (c. 48) (see Companies Act 1948 (c. 38), s.95(8)), included debenture stock the certificates for which did not themselves contain any charge but which had the benefit of a charge given by a covering deed: see *Cunard S.S. Co. v. Hopwood* [1908] 2 Ch. 564. See also DEBENTURE; MORTGAGE OR CHARGE; CREATE.

(2) (Finance (1909–10) Act 1910 (c. 8), s.73). The purchase, by one purchaser at an auction sale, of several lots in the same street belonging to the same vendor did not form part of a “series of transactions” (*A.-G. v. Cohen* [1937] 1 K.B. 478).

(3) “Series of Offences” (Indictments Act 1915 (c. 90), Sched. 1, r. 3; see Indictment Rules 1971 (No. 1253), r. 9). Two offences may constitute a series within the meaning of this rule (*R. v. Kray and Others* [1970] 1 Q.B. 125; *Ludlow v. Metropolitan Police Commissioner* [1971] A.C. 29). See also SIMILAR.

“Series of operations” (Water Resources Act 1963 (c. 38), s.24(1)). Where from time to time a farmer had, over a number of years, drawn water from a pond in a river in order to meet additional needs for water on the farm, these abstractions were held to have constituted a “series of operations” within the meaning of this section (*Cargill v. Gotts* [1981] 1 W.L.R. 441).

“Series of two or more offences of the same or a similar character,” see SAME.
(Of Companies); Stat. Def., Income and Corporation Taxes Act 1970 (c. 10), s.532(6)(a).

SERIOUS. (1) What was “serious and wilful misconduct” of a workman (s.1(2), Workmen’s Compensation Act 1897 (c. 37)) was a question of fact having regard to the whole matter of each case; breach of rules, even those under the Coal Mines Regulation Act 1887 (c. 58), did not necessarily constitute such misconduct (*Rumboll v. Nunnery Colliery Co.* 80 L.T. 42). See further *Rees v. Powell Duffryn Co.* 64 J.P. 164; *Reeks v. Kynoch* 18 T.L.R. 34; *John v. Albion Co.* 18 T.L.R. 27; EMPLOYMENT; MISCONDUCT.

(2) All the cases hereon only elucidated the principle stated above (para. (1)), for a later decision in the House of Lords settled that “what amounts to serious misconduct in any given case is a question of fact to be determined by the judge of first instance on the facts of that case; and the function of the Court of Appeal and of this House is confined to deciding the question of law whether there was any evidence to sustain this finding” (*per* Lord Atkinson *Johnson v. Marshall* [1906] A.C. 415); in that case there had been a breach of a rule which, though “wilful” in the sense of its being done of the workman’s own accord, yet was not a “serious” matter—on which see *per* Lord James, who pointed out that “serious misconduct” connoted something serious in itself and the consequences of which, it may reasonably be anticipated, would be serious; as distinct from serious consequences that might unexpectedly happen—a dictum which was exemplified by *Bist v. London & South Western Railway* [1907] A.C. 209. See further s.1, Workmen’s Compensation Act 1925 (c. 84), on which see *Harding v. Brynddu Colliery Co.* 55 S.J. 599, where Cozens-Hardy M.R., pointed out that serious and wilful misconduct of a workman causing his death did not deprive his dependants of their right to compensation, if such misconduct was within the scope of the workman’s employment. For further discussion as to what was serious and wilful misconduct within the meaning of the section, see *Costello v. Addie & Sons’ Collieries Ltd.* [1922] A.C. 164; *Coltness Iron Co. v. Baillie* [1922] 1 A.C. 170; *Smith v. Russell* 14 B.W.C.C. 278; *Moore v. Donnelly* [1921] A.C. 329.

SERIOUS HARDSHIP. S. 1 (2), (Courts (Emergency Powers) Act 1917 (c. 25): see *Electric Pavilions v. Lorden* [1918] 2 Ch. 399, distinguished in *Metropolitan Electric Supply Co. v. London County Council* [1919] 1 Ch. 357; see also *Direct U.S. Cable Ltd. v. Western Union Telegraph Co.* [1921] 1 Ch. 370; *North Metropolitan Electric Power Supply Co. v. Stoke Newington Corporation* [1921] 1 Ch. 455.

SERJEANT-AT-LAW. See 3 Bl. Com. 27; 6 Bing. N.C. 232–239. See PREMIER.

SERJEANTY. (1) “ ‘Grand serjeanty’ is where a man holdeth of the King certaine land by the service of carrying his banner or lance, or to leade his host, or to be his carver or butler at his coronation.

(2) “ ‘Petit serjeanty’ is when one holdest of the King, paying to him yeerly a bow, a sword, a speare, and such like, and that is but SOCAGE, in effect” (*Termes de la Ley, Grand Serjeanty*). Later on (*Petit Serjeanty*) the learned author says that the bow should be “without string.”

See further as to grand serjeanty, Litt. ss.153–158; Co. Litt. 105 b–108 a; 2 Bl. Com. 73 *et seq.*; as to petit serjeanty, Litt. ss.159–161; Co. Litt. 108 a–108 b; 2 Bl. Com. 81 *et seq.*

(3) Tenures Abolition Act 1660 (c. 24), which converted the old military tenures (of which serjeanty was one) into free and common socage, preserved the honorary service of grand serjeanty.

See TENURE.

SERMON. As to an endowment for a “sermon” once a year, see *Re Avenon’s Charity* [1913] 2 Ch. 261.

SERVANT. (1) In determining whether a person is entitled to participate in a bequest to “servants” regard must be had to—

- (a) the nature of the service;
- (b) its duration;
- (c) its conditions.

(a) It seems an obvious thing to say that there must be the relationship of master and servant between the testator and the person claiming as “servant”; therefore, a coachman supplied, with a carriage and horses, by a job-master is not a “servant” of the job-master’s customer (*Chilcot v. Bromley* 12 Ves. 114; cp. *Howard v. Wilson* 4 Hagg. Ecc. 107). When, however, there is the relationship of master and servant, the word “servants,” in a bequest and uncontrolled by a context, is very comprehensive. Thus a land agent and house steward, who resided out of the testator’s house and had a salary of £300 a year, with permission to use his unemployed time as land agent to several large neighbouring landed proprietors, was held to be included in a bequest to “all my servants and day labourers” (*Armstrong v. Clavering* 27 Bea. 226; but see *Townshend v. Windham* 2 Vern. 547, inf.). So an outdoor servant, continuously employed at weekly wages, is within a legacy to “servants”; but a person employed at weekly wage, only a few months in the year, to carry letters to the post is not within the phrase (*Thrupp v. Collett* 26 Bea. 147). See further *Re Drake* [1921] 2 Ch. 99, and cases therein cited. See also *Re Rosse* (*Countess of*) 93 L.J. Ch. 8, inf.

(b) When a testator gives to his servants a year’s wages, those, and only those, hired by the year are included; the time when the wages have been paid being only useful to determine the nature of the hiring, and being immaterial where the hiring can otherwise be proved to have been a yearly one (*Booth v. Dean* 2 L.J. Ch. 162; *Blackwell v. Pennant* 22 L.J. Ch. 155). See further *Re Ravensworth* [1905] 2 Ch. 1; distinguished *Re Sheffield* 80 L.T. 313, cited YEAR.

(c) A bequest to “servants,” *simpliciter*, includes, as a general rule, those, and only those, who pass their whole time in the testator’s service; and does not include such servants as stewards of courts or persons occasionally employed (*Townshend v. Windham* 2 Vern. 546; *Thrupp v. Collett* sup.; cp. *Armstrong v. Clavering* sup.); but a regular servant’s temporary absence would not disentitle him (*Herbert v. Reid* 16 Ves. 486). So, service being the cause of such a bequest, only those servants who are in the testator’s service at the time of his death (from which date his will generally speaks) are, as a general rule, entitled under a bequest to “servants” (*Jones v. Henley* 2 Ch. Rep. 162); though, of course, if the phrase, controlled and properly construed by its context, is *designatio personarum*, a person so designated would take whether in the service or not at the testator’s decease (*Parker v. Marchant* 11 L.J. Ch. 223, cited 1 Jarm. (8th ed.) 1098–9, for the proposition that a gift to “servants,” *simpliciter*, means servants at the date of the will; see also Theobald, 248; but it is submitted that the rule to be deduced from *Jones v. Henley* and *Parker v. Marchant* is as here stated; see also *Re Sharland* [1896] 1 Ch. 517). When indeed the condition of being in the service “at the time of my decease” is expressly

annexed to a gift to “servants,” then it is essential to any one undertaking thereunder that the contract for service should be absolutely unbroken by both of the parties thereto at the time of the decease; and a wrongful dismissal by the master or a rescission by the servant, or other determination of the service, however reached, in the testator’s lifetime, would prevent a person from claiming under such a conditional bequest to “servants” as that just mentioned (*Darlow v. Edwards* 32 L.J. Ex. 51; *Venes v. Marriott* 31 L.J. Ch. 519; “living with me” does not mean “living in my house,” but means “living in my service”—*per* Turner V.-C., *Blackwell v. Pen-nant* sup.). The condition of being on testator’s “domestic establishment” is not fulfilled in the case of a head gardener living in one of the testator’s cottages but not dieted by him (*Ogle v. Morgan* 1 D.G.M. & G. 359). See DOMESTIC SERVANT; HOUSEHOLD; MENIAL SERVANT.

(2) A bequest to “indoor and outdoor servants not in receipt of daily, weekly or monthly wages” was held not to include the resident land agent of testatrix, who received a salary of £600 a year, nor his son who acted as his assistant at £200 a year (see *Re Rosse (Countess of)* 93 L.J. Ch. 8). See also *Re Brownlow* 69 S.J. 176.

(3) Though the priority in bankruptcy which “servants” had to payment of their wages (see s.33(b), Bankruptcy Act 1914 (c. 59)) was doubtless intended primarily for, yet it is not the exclusive privilege of, domestic servants. Therefore a commercial traveller (*Ex p. Neal* Mont. & M.A. 194), or a mate of a vessel (*Ex p. Homberg* 6 Jur. 898), or a seaman (*Re Dawson* 1 Fon. B.C. 229), is within the word “servant” as so used in the Bankruptcy Act. But though a yearly hiring is not necessary to constitute a “servant” within the section just referred to, yet there must be a general and continuous hiring as distinguished from a mere transitory engagement. Therefore a coachguard and servants at a weekly salary (*Ex p. Skinner* Mont. & B. 417), or an accountant occasionally employed (*Ex p. Butler* 28 L.T.O.S. 375), or a public singer (*Ex p. Harcourt* 31 L.T.O.S. 188), or a non-resident music-master or a drill-master to a school, who attends the school to give lessons at so much *per* lesson (*Ex p. Walker* L.R. 15 Eq. 412), is not within the section. By s.(1)(1)(c), Preferential Payments in Bankruptcy Act 1888 (51 & 52 Vict., c. 62), “wages of any labourer or workman, not exceeding £25, whether payable for time or for piece work,” were entitled to the priority, an enactment which superseded such discussions as those in *Ex p. Allsop* 32 L.T. 433; *Re Field* 4 Morr. 63. See further CLERK; Bankruptcy Act 1914 (4 & 5 Geo. 5, c. 59), s.33; Companies Act 1947 (c. 47), s.115; *Re Winter German Opera* 23 T.L.R. 662.

(4) “Servant” of a company entitled to a preferential payment when the company is being wound up or a receiver appointed for debenture holders secured by a floating charge, was held not to include a newspaper reporter not exclusively employed by the company owning the newspaper (*Re Ashley & Smith* [1918] 2 Ch. 378).

(5) The secretary of a company in receipt of a salary of £50 a quarter and subject to dismissal at a quarter’s notice, was not a “servant, labourer, or workman” within the Wages Attachment Abolition Act 1870 (c. 30) (*Gordon v. Jennings* 51 L.J.Q.B. 417). In that case, Grove J., said, “In one sense a secretary of state is a ‘servant,’ but it could not have been intended that this Act should apply to such a case.”

(6) Every person actually engaged in the performance of a contract of carriage was a “servant” of the carrier within s.8, Carriers Act 1830 (c. 68); and therefore where a carrier employed a person, *e.g.* the proprietor of a receiving house, and such person employed an assistant, such assistant was a “servant” in the employ of the carrier within the section (*Machin or Machu v. London & South Western Railway* 2 Ex. 415). And “where a person is employed by two railways, and receives

goods without any instructions as to the railway by which they are to be sent, it may be that the goods are not received for either of the railways; but when he has determined by which railway they are to be sent, he then holds them for that railway" (*per* Esher M.R., *Stephens v. London & South Western Railway* 18 Q.B.D. 121, citing *Syms v. Chaplin* 6 L.J.K.B. 25).

(7) "Servants" (s.7, Railway and Canal Traffic Act 1854 (c. 31)) included agents employed by a railway company to do work which it was under contract to execute (*Doolan v. Midland Railway* 2 App. Ca. 792; approving *Machin v. London & South Western Railway* *sup.*).

(8) As to who was a "servant or other person" who might dwell in a house for its protection without rendering it liable to the inhabited house duty (s.13(2), Customs and Inland Revenue Act 1878 (c. 15)) seems to have been very much a question for the tax commissioners; therefore, where they found that a cashier resided (alone) as a caretaker and was such a "servant or other person," the court refused to disturb their finding (*Rolfe v. Hyde* 6 Q.B.D. 673); but in a very similar case (the clerk caretaker, however, having his wife, children and a servant with him), the Court of Appeal reversed the finding of the commissioners, and held that the building was liable to the duty (*Yewens v. Noakes* 6 Q.B.D. 530). Apparently to remedy that uncertainty, s.24, Customs and Inland Revenue Act 1881 (44 & 45 Vict., c. 12), referred to the section just cited and enacted that "the term 'servant' shall be deemed to mean and include only a menial or domestic servant employed by the occupier; and the expression 'other person' shall be deemed to mean any person of a similar grade or description not otherwise employed by the occupier, who shall be engaged by him to dwell in the house or tenement solely for the protection thereof": see thereon *Weguelin v. Wyatt* 54 L.J.Q.B. 308; *nom. Weguelin v. Wayall* 14 Q.B.D. 838; *London Library v. Carter* 6 T.L.R. 161. See further DOMESTIC SERVANT; MENIAL SERVANT; *per* Lord Adam *Forbes v. Standard Life Assurance* 31 Sc. L.R. 663, which last case see on the words "for the protection thereof" in s.24, Customs and Inland Revenue Act 1881 (c. 12).

(9) Servant as regards action for seduction: see Rosc. N.P. (20th ed.) 912 *et seq.*; Add. T. (7th ed.) 586–592. See further *Whitbourne v. Williams* [1901] 2 K.B. 722, approving dictum of Watson B., in *Thompson v. Ross* 29 L.J. Ex. 2.

(10) "Servant or agent" of employer within meaning of s.4(a), Licensing Act 1921 (c. 42): see *Adams v. Camfoni* 44 T.L.R. 822.

(11) "Servant" (Licensing Act 1964 (c. 26), s.169) does not include an agent, and the wife of a licensee was held to be an agent (*Brandish v. Poole* [1968] 1 W.L.R. 544).

(12) As to whether a bookmaker's clerk in sole charge of business but with limited authority is "negotiating bets as a servant or agent to" his master so as to require a bookmaker's certificate in his own name, is a question of fact in each case: see *Lake v. Cronin* [1929] 1 K.B. 31.

(13) "Servant of the Crown": the Custodian of Enemy Property having received property into his hands in his capacity as a servant of the Crown was immune from income tax thereon (*Bank voor Handel en Scheepvaart v. Administrator of Hungarian Property* [1954] A.C. 584).

"Clerk or servant": see CLERK.

See FARM SERVANT; MALE SERVANT; OFFICER; POSSESSION; SERVANT IN HUSBANDRY; SERVANTS; WORKMAN; DOMESTIC SERVANT.

SERVANT IN HUSBANDRY. A "servant in husbandry" is a person, whether male or female, whose chief employment is in works of husbandry; *i.e.* the culture or

keeping of the ground, or the management or working of horses or cattle, or the gathering in of crops, or any other work strictly pertaining to the manual labour required by farmers. Therefore a farm bailiff is not (*Davis v. Berwick* 30 L.J.M.C. 84), but a dairy-maid, who also does household work, is a servant in husbandry (*Exp. Hughes* 23 L.J.M.C. 138). Cp. AGRICULTURAL.

See FARM SERVANT.

SERVANTS. "If a man have a licence for himself 'and his servants' to hunt in a chase, park, or warren, at his pleasure; this is a licence of profit; for by virtue of those words 'for himself and his servants,' the grantee hath a property in the thing hunted, because he may justify hunting by his servants, which is more than a licence of pleasure" (Manwood, *Hunting*, pl. 17; see further *Wickham v. Hawker* 10 L.J. Ex. 153; FREE LIBERTY). See further HUNTING; PROFIT À PRENDRE.

SERVE; SERVICE. (Employment). (1) In feudal times, and still as regards copyholds, "service" is that service which the tenant, by reason of his fee, oweth unto his lord" (Cowel). Cp. SUIT.

(2) "Service" to the King, for which he might grant "recompense" so that the grant was protected by 34 & 35 Hen. 8, c. 20, and which, if an entail, could not be barred (s.18, Fines and Recoveries Act 1833 (c. 74), might be rendered to a King *de jure*, e.g. Charles II between the date of his father's execution and his own restoration (*Robinson v. Gifford* [1903] 1 Ch. 865; see further SUBJECT). Such a grant by the King implied that service was rendered (*Perkins v. Sewell* 1 Bl. W. 654), unless the contrary appeared, e.g. where the grant expressed it to have been in consideration of "the natural love and affection which he (Charles II) had and bore towards his most dear natural son, Henry Fitzroy, Earl of Euston" (*Grafton v. London & Birmingham Railway* 8 L.J.C.P. 47). Cp. EX MERO MOTU.

(3) To "serve," or to "contract to serve," connotes becoming a servant to someone else. "There is a very plain distinction between becoming the servant of an individual, and contracting to do certain specific work. The same person may contract to do work for many others, and cannot, with any propriety, be said to have contracted to 'serve' each of them" (*per* Bayley J., *Hardy v. Ryle* 9 B. & C. 611, 612).

(4) An industrial trainer living in a workhouse did not "serve" the master of the workhouse, within s.3, Representation of the People Act 1884 (c. 3), nor does a soldier so "serve" under every one of superior rank to himself in the same regiment (*Adams v. Ford* 16 Q.B.D. 239; *Atkinson v. Collard* 16 Q.B.D. 254). A farm labourer who by the terms of his hiring is allowed, but not obliged, to occupy a cottage on the farm, does not occupy it by virtue of service (*Marsh v. Estcourt* 24 Q.B.D. 147).

(5) So, a similar occupation of a house by a salaried schoolmaster is not an occupation by virtue of service (*Dover v. Prosser* [1904] 1 K.B. 84), for an independent occupation of such a kind shows an occupation "as tenant"; *secus* probably, if the occupier were, by his employment, required to reside in the house (*M'Clean v. Pritchard* 20 Q.B.D. 285), and so, of course, of such an occupation as a house for a gamekeeper (*Petersfield* 2 O'M & H. 94).

(6) *Ford v. Barnes* 55 L.J.Q.B. 24 (cited DWELLING-HOUSE), applies as regards a disqualifying absence of the servant (*Larcombe v. Simey* [1907] 1 K.B. 139).

(7) A successive occupation partly by service and partly as an ordinary tenant, qualified for the parliamentary franchise (*Nicholson v. Yeoman* 24 Q.B.D. 145, cited SUCCESSIVE). In that case, Coleridge C.J., said, "It is a satisfaction to the court

to find that this question has been (*Torish v. Clark* 18 L.R. Ir. 285), decided in the same manner as this court now decides it.”

(8) An apprentice “duly and truly” serves his master, as regards a qualification to membership of a company or other privilege, if, with his master’s consent, he is actually employed otherwise than by the master (*Richardson v. Colne Fishery Co.* 77 L.T. 501).

(9) The statement that a man had “served” a public annual office to which he was “duly and legally appointed” imported that he executed the office “for himself and on his own account” within s.6, Poor Relief Act 1691 (c. 11) (*R. v. Anderson* 9 Q.B. 663).

(10) “Officer who shall have served”: see *Walker v. Simpson* [1903] A.C. 208, cited OFFICER.

(11) Served for not less than 20 years as in proviso to s.8, Poor Law Officers’ Superannuation Act 1896 (c. 50): see *Price v. Eastbourne Union* [1920] 1 Ch. 535.

(12) Service (Local Government Superannuation Act 1937 (6, c. 68), s.8(5)) had the same meaning as in s.40(1), and included contributory and non-contributory service (*Jobbins v. Middlesex County Council* [1949] 1 K.B. 142).

(13) “Five years’ service with the company” in a will did not mean continuous service, and did not include war service (*Re Bedford* [1951] Ch. 905); see also *Re Marryat* [1948] Ch. 298, cited PERIOD, para. (3).

(14) A servant is regarded as being in the service of a patient whose property is in the hands of the receiver, where the receiver pays him his wages as a retaining fee (*Re Silverston* [1949] Ch. 270).

Contract of service, see CONTRACT OF SERVICE.

Stat. Def., Income and Corporation Taxes Act 1970 (c. 10), s.224(1).

SERVE; SERVICE (Notice). (1) A notice may generally be either in writing or oral; if directed to be “given,” or is spoken of as to be “received” (*Thompson v. Ayling* 4 Ex. 614), it may be in either of those modes; but if it is to be “left” or “served,” then there is an implication that the notice is to be written (*Wilson v. Nightingale* 8 Q.B. 1034; *R. v. Shurmer* 17 Q.B.D. 323, especially judgment of Coleridge C.J., in this last case). But “serve” does not enjoin personal service; and as used in r. 186, Bankruptcy Rules 1886, a prepaid registered letter sufficed (*Re McGrath* 24 Q.B.D. 466).

(2) Notice of a bankruptcy petition having been presented against a judgment debtor was sufficiently “served” within s.42(2) of the Bankruptcy Act 1914 (c. 59), on the sheriff levying execution, if the fact of the bankruptcy petition had come to the notice of the sheriff (*Re Harris* [1931] 1 Ch. 138).

(3) Delivery to a debtor pursuant to r. 155 of the Bankruptcy Rules 1915, of a sealed copy of the bankruptcy petition was not “effectual service” of the petition, for the purposes of s.5(1) of the Bankruptcy Act 1914 (c. 59), unless the nature of the document was brought to the knowledge of the debtor (*Re a Debtor* [1939] Ch. 251).

(4) There was a sufficient notice, under s.31, Vaccination Act 1867 (c. 84), if the justices were satisfied that it had reached the right person (*Holloway v. Coster* [1897] 1 Q.B. 347); so, of a notice to be “served on” the holder of a licence under s.42, Licensing Act 1872 (c. 94) (*Ex p. Portingell* [1892] 1 Q.B. 15). In this last case, Esher M.R., said, “I think the expression ‘serve on’ is equivalent to ‘give or deliver unto,’ ” which latter words do not connote personal service (*R. v. Leicester Freeman* 15 Q.B.D. 671). *Semble*, a notice may be “delivered” without being in writing: see DELIVER.

(5) “After service” of notice (s.38(5), Coal Mines Regulation Act 1887 (c. 58)) had to be read as “within 6 months after service” (*Stokes v. Hill* [1901] 1 K.B. 493).

(6) “Proper service” (Customs and Excise Act 1952 (c. 44), Sched. VII, para. 4): where the solicitors specified in the notice of claim are in existence but are no longer in a position to accept service of the writ, and no notice of any change of solicitors has been given, service of such solicitors will be “deemed proper service” (*Customs and Excise Commissioners v. I.F.S. Irish Fully Fashioned Stockings* [1957] 1 W.L.R. 397).

(7) “Give . . . notice in writing” (Law of Property Act 1925 (c. 20), s.36(2)) is the same as “serve” and therefore posting is sufficient, as provided for by s.196(4) (*Re 88 Berkley Road, Rickwood v. Turnsek* [1971] 2 W.L.R. 307).

(8) “Given . . . to each of the other parties” (Criminal Justice Act 1967 (c. 80), s.2(2)(c)) is satisfied if service is effected on each party’s solicitor (*R. v. Bott* [1968] 1 W.L.R. 583).

(9) “Notice . . . was served” (Road Traffic Act 1930 (c. 43), s.21(c)). Sending a notice by registered post to a person’s home address was not enough to constitute service under this section if it was not received (*Beer v. Davies* [1958] 2 Q.B. 187).

(10) “Served on” (Road Traffic Act 1960 (c. 16), s.241(2)(c)(ii)). The mere delivery to someone like a hall porter, even though he had authority to take in letters might not have been enough to satisfy the requirements of service under this section (*Burt v. Kirkcaldy* [1965] 1 W.L.R. 474).

(11) “Served on him” (Road Traffic Act 1972 (c. 20), s.10(5), as amended by the Transport Act 1981 (c. 56), Sched. 8). Service on the defendant’s solicitor was held to satisfy the requirements of this section (*Anderton v. Kinnard*, *The Times*, February 13, 1985).

(12) “Served on” (Companies Act 1948 (c. 38), s.326(2)). Service of a notice of a meeting to consider a resolution to wind up a company on a sheriff’s officer is not service on the sheriff within the meaning of this section (*Hellyer v. Sheriff of Yorkshire* [1975] Ch. 16).

SERVE; SERVICE. (Sentence). A youth who had been sentenced to Borstal but who had absconded before completing his sentence had not “served a previous sentence” within the meaning of s.3(3) of the Criminal Justice Act 1961 (c. 39) (*R. v. Hughes* [1968] 1 W.L.R. 560).

SERVED. An execution “served” had the same meaning as an execution “executed” within s.9 of the Bankruptcy Act 1624 (c. 19 (*per* Patterson J. in *Wray v. Egremont* 4 B. & Ad. 125)).

SERVI. See VILLANI.

SERVICE OF GOD. A bequest for “the service of God” (*Re Darling* [1896] 1 Ch. 50), or for “the service of my Lord and Master, and, I trust, Redeemer” (*Powerscourt v. Powerscourt* 1 Moll. 616), is a good charity. So, a gift to the ringers of a parish church who should ring a peal of bells from 6 to 7 a.m. on each 29th May, “in commemoration of the happy restoration of the monarchy to England,” is a good charity, for the intention was to bring back happy thoughts necessarily connoting “a feeling of gratitude to the Giver of all good gifts” (*per* Kekewich J., *Re Pardoe* [1906] 2 Ch. 184).

See RELIGIOUS.

SERVICE OF THE SHIP. (1) Master, seaman, or apprentice, receiving “hurt or INJURY in the service of the ship” (s.228, Merchant Shipping Act 1854 (c. 104)), includes an injury received from an occurrence causing the wreck of the ship (*Lord Advocate v. Grant* 1 Sess. Ca. (4th Ser.) 447). See Merchant Shipping Act 1906 (c. 48), s.34. See further 1 Maude & P. (4th ed.) 208, no. (i).

(2) A shipowner is not liable, under s.34(1), Merchant Shipping Act 1906 (c. 48), for surgical or medical advice, etc., after the master, seaman, or apprentice has been brought back to the home port (*Anderson v. Rayner* [1903] 1 K.B. 589; see also *Anchor Line, Ltd. v. Mohad* [1922] 1 A.C. 146).

SERVICEABLE. “Good and serviceable repair”: see GOOD REPAIR.

SERVICES. (1) Annuity for “services and collecting rents”: see *Re Muffett* 39 Ch. D. 534.

(2) Percentage to directors on net profits of a company “as remuneration for their services,” connotes that the transactions from which such profits arise should, generally, be attributable to the ordinary working of the company by the directors (*Frames v. Bultfontein Mining Co.* [1891] 1 Ch. 140, cited NET).

(3) “Services incidental to the duty of a carrier”: see INCIDENT. See hereon *Hamilton v. Caledonian Railway* 43 Sc. L.R. 696, cited TERMINAL; *Midland Railway v. Myers* [1908] 2 K.B. 356, cited THINK FIT.

(4) “Services” of a pilot under s.17(1), Pilotage Act 1913 (c. 31): see *Muller v. Corporation of Trinity House* [1925] 1 K.B. 166.

(5) “Services rendered . . .” by the desire of a trader under Pt. IV of the Sched. to the London and North Western Railway Co. (Rates and Charges) Order Confirmation Act 1891 (c. ccxxi): see *London & North Western Railway Co. v. Duerden* 85 L.J.K.B. 885.

(6) “Services rendered” by railway company at or in connection with sidings not belonging to the company: see *Foster Bros. v. Great Eastern Railway Co.* [1920] 2 K.B. 574.

(7) A company running taxicabs is not “rendering a service” within s.19 of the Finance Act 1937 (c. 54) (*London General Cab Co. v. Inland Revenue Commissioners* [1950] 2 All E.R. 566).

(8) “Services used for the purposes of a building operation” within reg. 56A of the Defence (General) Regulations 1939, did not include the services of architects (*Young v. Buckles* [1952] 1 K.B. 220). It seems that work on a driveway to a garage did not come within the phrase “services for a building” within Pt. II of Sched. VI to reg. 56A (*Muir v. James* [1953] 1 Q.B. 454).

(9) “Services” (Housing Repairs and Rents Act 1954 (c. 53), s.40): see *R. v. Paddington North and St. Marylebone Rent Tribunal ex p. Perry* [1956] 1 Q.B. 229.

(10) “Services” (Rent Act 1965 (c. 75), s.28(1)) could include management charges and selective employment tax where these were incurred by the landlord in the provision of services (*Metropolitan Properties Co. v. Noble* [1968] 1 W.L.R. 838).

(11) “Service” (Local Government Act 1933 (c. 51), s.76(1)) meant a service which the local authority provided for the public, and did not extend to the provision of a house (*Brown v. D.P.P.* [1956] 2 Q.B. 369).

(12) The supply of drugs to National Health Service hospitals is use for the “services of the crown” within the meaning of the Patents Act 1949 (c. 87), s.46(1) (*Pfizer Corporation v. Ministry of Health* [1965] Ac. 512).

(13) “Services” (Theft Act 1978 (c. 31) s.1). A survey by a building society’s

agent is a “service” within the meaning of this section, but the opening of an account by the building society or the advance of a mortgage are not (*R. v. Halai* [1983] Crim. L.R. 624).

Stat. Def., Furnished Houses (Rent Control) Act 1946 (9 & 10 Geo. 6, c. 34), s.12(1); Rent Act 1968 (c. 23), s.84; Fair Trading Act 1973 (c. 41), ss.117(1), 137(3)(4); Restrictive Trade Practices Act 1976 (c. 34), s.20; Rent (Agriculture) Act 1976 (c. 80), Sched. 6; Rent Act 1977 (c. 42), ss.19(8), 85(1), Sched. 8, para. 1.

“Provision . . . of . . . services to the public.” See PROVISION.

SERVICING PREMISES. “Vehicles servicing premises” (City of Hereford (High Town) (Prohibition of Driving and Cycling) Order 1973, art. 5(3)). Where traffic regulations forbid entry to all vehicles other than those “servicing premises,” it was held that a private hire car delivering passengers was not “servicing premises” (*Phillips v. Proser* [1976] R.T.R. 300).

SERVIENT. Servient tenement: see EASEMENT.

SERVING. (1) “Open for the serving of customers on Sunday” (Shops Act 1950 (c. 28), s.47), the phrase does not cover a case where a car is inspected on a Sunday, though it applies if a customer is taken for a demonstration run in the car (*Waterman v. Wallasey Corporation* [1954] W.L.R. 771). A shop which is open for the display of goods and prices, and where there is an employee to answer questions, is open for the “serving” of customers within the meaning of the section although no sales take place (*Betta Cars v. Ilford Corporation* (1959) 124 J.P. 19). The “serving of customers” in this section means the personal serving of customers and whether personal services are rendered outside the permitted opening hours is a question of fact and degree (*Ilford Corporation v. Betterclean (Seven Kings)* [1965] 2 Q.B. 222).

(2) “Serving of customers” (Shops Act 1950 (c. 28), s.2). A shop which held an exhibition and demonstration of goods outside the permitted hours was held to be “serving” its customers, even though no actual sales took place (*Haverling London Borough Council v. L.F. Stone & Son* (1973) 72 L.G.R. 223). But a showroom containing examples of kitchen furniture designed to be custom built to order, which opened in order to record the names and addresses of potential customers was held not to be open for the “serving of customers” within the meaning of this section (*Bury Borough Council v. Law; Same v. Cowburn* (1984) 82 L.G.R. 170).

“Serving a sentence of imprisonment,” see SENTENCE.

SERVITUDE. See EASEMENT.

“Penal servitude”: see PENAL.

SESSIONS (1) “ ‘Sessions,’ in our law, is a sitting of justices in court upon their commission, as the sessions of oyer and terminer” (Termes de la Ley). Cp. TO BE PASSED.

(2) “Sessions” (s.35(5), Local Government Act 1888 (c. 41): see *Re Dover and Kent County Council* [1891] 1 Q.B. 389, cited QUARTER SESSIONS.

Next quarter sessions: see NEXT.

“Court of sessions”: see COURT.

See GENERAL OR QUARTER SESSIONS; PETTY SESSIONS; PRESENTMENT; SITTING; SPECIAL.

SET. Enamel work may possibly be a jewel, but if it is worked on a gold or silver foundation it is not “set” in the metal within s.2, Plate (Offences) Act 1738 (12 Geo. 2, c. 26): see *Fabergé v. Goldsmith’s Co.* 80 L.J. Ch. 97, cited **PLATE**.

SET APART. To “set apart” land for a particular purpose, does not require that the setting apart should be irrevocable (*Re Ponsford and Newport School Board* [1894] 1 Ch. 454). Therefore, land acquired by a private cemetery company for the purpose of a burial ground, which they have adapted for that purpose by enclosing it and providing it with a chapel and using part of it for burials, is “set apart for the purposes of interment,” within s.1, Metropolitan Open Spaces Act 1881 (c. 34), as amended (and also applied to Disused Burial Grounds Act 1884 (c. 72)) by ss.2 and 4, Open Spaces Act 1887 (c. 32), although the land has never been consecrated; and the company has power to sell or let any part of it (*ibid.*); *secus*, as regards the site of a church where intramural interment has taken place (*Re Ecclesiastical Commissioners and New City of London Brewery* [1895] 1 Ch. 702, followed in *A.-G. v. London Parochial Charities* [1896] 1 Ch. 541). See **BURIAL GROUND**.

“Retain and set apart”: see **RETAIN**.

SET FIRE. In arson, “as to what constitutes ‘setting fire,’ it is not necessary that flame should be seen (*R. v. Stallion* 1 Moody, 398); but it is not sufficient that wood should be scorched black (*R. v. Russell C. & M.* 541). It is sufficient if the wood has been at a red heat (*R. v. Parker* 9 C. & P. 45). I suppose the question is whether the thing burnt has, or has not, begun to be decomposed by the action of the fire” (Steph. Cr. (9th ed.) 426, n. 7) See further Arch. Cr. (32nd ed.) 824; Rosc. Cr. (15th ed.) 393–4; **BURN**; **FIRE**.

SET FORTH. (1) It is submitted that where there are, in the operative part of a deed, clear and unambiguous words of description of the lands or chattels to be thereby conveyed, such words will not be restricted by a statement that such lands or chattels are “described” or “mentioned” or “specified” or “set forth,” in a schedule which gives an imperfect enumeration (*Walsh v. Trevanion* 15 Q.B. 733; *Re Royal Maine Hotel Co.* [1895] 1 I.R. 368; *Baker v. Richardson* 6 W.R. 663; cp. *Goodtitle v. Southern* 1 M. & S. 299, and like cases, cited **OCCUPATION**). But this principle was not applied in *Wood v. Rowcliffe* (6 Ex. 407), where it was held that a bill of sale of “all the household goods of every kind and description whatsoever in A, more particularly mentioned and set forth in” a schedule, only passed the goods mentioned in the schedule; and that, indeed, will be the effect if it can be seen that the intention was that the schedule should be an exhaustive enumeration (*Walsh v. Trevanion* sup.).

(2) Director of a company to “set forth” the nature of his interest in a contract with his company: see *Costa Rica Railway v. Forwood* [1901] 1 Ch. 746, cited **DECLARE**.

See **TRULY SET FORTH**.

SET OFF. (1) A legal set-off is: “where there are mutual debts (see **DEBT**) between the plaintiff and defendant, or if either party sue or be sued as executor or administrator (where there are mutual debts between the testator or intestate and either party), one debt may be set against the other” (s.13, Insolvent Debtors Relief Act 1728 (c. 22): s.4, Set-off Act 1734 (c. 24)). See as to set-off and counter-claim. R.S.C., old Ord. 18, r. 16 and old Ord. 15, r. 2 respectively. As used in R.S.C.,

“set-off” and “counter-claim” “confer definite and independent remedies upon a defendant against the plaintiff” (*per* Brett L.J., *Pellas v. Neptune Marine Insurance* 5 C.P.D. 39); probably a “counter-claim” may be defined as a claim independent of, and separable from, the plaintiff’s claim, and which formerly would have had to be enforced by a cross action. See hereon *per* Lord Davey, *Williams v. North’s Collieries* [1906] A.C. 136, cited PAYMENT; *cp. Re Paraguassu Co.* 8 Ch. 254; see also *Bennett v. White* [1901] 2 K.B. 643, cited ABSOLUTE ASSIGNMENT; *Jones v. Harris* [1927] 1 K.B. 425. See ADMITTED SET-OFF.

(2) (Bankruptcy Act 1914 (c. 59), s.1(1)(g)) is something which provides a defence because the nature and quality of the sum so relied upon are such that it is a sum which is proper to be dealt with as diminishing the claim which is made and against which the sum so demanded can be set off (*Re a Bankruptcy Notice* (No. 171 of 1934) [1934] Ch. 431, 437).

(3) Set-off under s.31 of the Bankruptcy Act 1914 (c. 59) is not restricted to mutual creditors, debts and other dealings arising out of contract; and, in this case, the Crown was allowed to set-off the moneys owing to it in respect of taxation and social security benefits against its obligation to repay value added tax (*Re D.H. Curtis (Builders)* [1978] Ch. 162).

(4) “Set off,” in s.23(2), Industrial and Provident Societies Act 1893 (c. 39), was “not used in the strict legal sense but more in the business, or accountant’s sense, as indicating that the society may deduct, or write off, from the sum credited the amount of the member’s debt” (*per* Alverstone C.J., *Re Gwawr-y-Gweithyr Industrial Society* [1901] 2 K.B. 482).

(5) The defence of a breach of warranty to a claim for the price of goods sold, was held not to be a set-off, and notice of the intention to set up such a defence need not therefore be given: see *Bright v. Rogers* [1917] 1 K.B. 917.

(6) “Adjust and set off” (s.3(1), Employers and Workmen Act 1875 (c. 90)): see *Keats v. Lewis Merthyr Collieries* [1910] 2 K.B. 445, cited CLAIM.

(7) “Set off” (Limitation Act 1939 (c. 21), s.28). It has been questioned whether this refers to a legal set off, as permitted by the statutes, where the cross-claims arise out of separate transactions, or an equitable set off (*Henriksens Rederi v. Rolimpex* [1973] 3 W.L.R. 556).

SET OUT. Where an award under the Inclosure Act 1845 (c. 118), after making compensation to the lord of the manor, proceeded to “set out, allot, and award” other parts of the common to other persons, those words conveyed the whole legal estate in the several allotments, to the exclusion of the lord (*Simcoe v. Pethick* [1898] 2 Q.B. 555, considering *A.-G. v. Meyrick* [1893] A.C. 1).

SET OVER. See ASSIGN; UNDERLEASE.

SET UP. (1) Trade, etc., “set up and commenced” (s.100, Sched. D, Case 1, r. 1, Income Tax Act 1842 (c. 35)): see *Ryhope Co. v. Foyer* 7 Q.B.D. 485; *cp. Ball v. National Provincial Bank* [1904] 1 K.B. 149, cited SUCCEED; *Merchiston S.S. Co. v. Turner* [1910] 2 K.B. 923.

(2) “Set up or carry on the business or profession of a surgeon”: see *Palmer v. Mallett* 36 Ch. D. 411; or business of a house agent: see *Farebrother v. England* 92 L.T. 129.

(3) To “set up” in practice as a physician or surgeon is, *semble*, as nearly as possible the same thing as to “carry on” that profession; therefore, where A agrees not to “set up in practice” as a physician or surgeon within a defined area, it will be a

breach “if he goes and habitually practises in the district, quite irrespective of whether he has a house there or not” (*per* Williams L.J., *Robertson v. Buchanan* 73 L.J. Ch. 408); but if he only visits two or three old patients, that “is not ‘setting up in practice’ within the prescribed area” (*per* Stirling L.J., *ibid.*); if the phrase were “not to PRACTISE,” “it would be very difficult, if not impossible, to justify attending a single patient, for remuneration, within the limits named” (*per* Williams L.J., *ibid.*).

(4) An agreement not to “set up or become interested in, either directly or indirectly,” a stated business, is not broken by becoming a salaried servant in such business (*Gophir Diamond Co. v. Wood* [1902] 1 Ch. 950); in that case, Swinfen Eady J., observed on the absence of “the common words ‘concerned in’ and ‘engaged in’ ”—phrases which are, probably, synonymous. But see *Ramoneur v. Brixey* 55 S.J. 489, cited CONCERNED IN. See *Cory v. Harrison* [1906] A.C. 274, cited INTERESTED IN. Cp. *Robertson v. Wilmott* 53 S.J. 631, cited PRACTISE.

(5) “Setting up a counterclaim.” A notice of an intention to rely on a counterclaim, contained in correspondence passing between plaintiffs’ and defendants’ solicitors was not a setting up of a counterclaim within the meaning of the old R.S.C., Ord. 21, r. 16 (see now Ord. 15, r. 2), so as to entitle the defendants to proceed with the counterclaim, if the plaintiffs’ action is discontinued: see *The Saxicava* [1924] P. 131.

(6) A power of advancement to “set up in business” a beneficiary, does not authorise an advance to pay debts, or (if the beneficiary be a woman) to set up her husband in business (*Talbot v. Marshfield* 3 Ch. 622, cited ADVANCEMENT).

(7) Machinery “set up” means, generally, completed, *e.g.* in a contract to “deliver and set up” (*Armitage v. Haigh* 9 T.L.R. 287). See ERECT; ERECTED.

SETTING DOG. “A ‘setting dog’ means any dog who stops at his game” (*per* Buller J., *Briarly v. Athorpe* 5 B. & Ald. 321, n.); but in s.4, Game Act 1706 (c. 16), “it is essential that it must be kept or used to kill game” (*ibid.* *Hayward v. Horner* 5 B. & Ald. 317). Cp. GREYHOUND.

SETTING OUT OF SOLDIERS. (1) The setting out of soldiers, which is one of the charitable purposes included in the preamble to the statute (1601) 43 Eliz., c. 4, includes the setting out of sailors of the Royal Navy but not those of the mercantile marine (*Re Corbyn, Midland Bank Executor & Trustee Co. v. A.-G.* [1941] Ch. 400).

(2) “Setting out of souldiers” (Charitable Gifts Act 1601 (c. 4) (see CHARITY)), *semble*, means to raise or equip (*Re Stephens* [1892] W.N. 140). See also PUBLIC CHARITY.

SETTLE. (1) As to construction of covenants to settle property, see AGREED AND DECLARED; ALREADY; DURING; ENTITLED; SETTLED; Elph. ch. 31; Norton, ch. 33; Vaizey, ch. 4, ss.10, 11; “interest which shall fall into possession,” *Sweetapple v. Horlock* 11 Ch. D. 745; *Re Jackson* 13 Ch. D. 189. See BECOME; *Re Scott-Chad* [1901] 1 Ch. 708, cited DEDUCTION; *Re O’Connell* [1903] 2 Ch. 574, dissented from in *Tremayne v. Rashleigh* [1908] 1 Ch. 681, cited ENTITLED; LESS; ONE TIME; SHALL.

(2) “The covenant to settle after-acquired property is a contract which has to be performed in strict accordance with its terms” (*per* Cozens-Hardy J., *Re Van Straubenzee* [1901] 2 Ch. 782).

(3) Generally, such a covenant by an intended wife in a marriage settlement will not “apply to property which the wife should acquire from her husband” (*per* *Malins V.-C.*, *Dickinson v. Dillwyn* L.R. 8 Eq. 546, applied in *Coles v. Coles* [1901] 1 Ch 711, which last case was followed in *Kingan v. Mabier* [1905] 1 Ir. R. 272); but, *semble*, there is no rule of law or construction to this effect, and each case will depend on its own language and circumstances; see *Re Ellis* [1909] 1 Ch. 618; *Re Plumtree* [1910] 1 Ch. 609.

(4) A general covenant to settle, will not embrace an interest that would be subject to forfeiture thereby (*Re Crawshay* [1891] 3 Ch. 176); nor will such a covenant embrace property which is subject to a restraint on alienation (*Re Currey* 32 Ch. D. 61, cited ANTICIPATION, as explained in *Re Bankes* [1902] 2 Ch. 333, cited TO BE PAID).

(5) A general covenant to settle after-acquired property will not include life interests or annuities (*per* *Cottenham C.*, *White v. Briggs* 22 Bea. 176, n.; *St. Aubyn v. Humphreys*, 22 Bea. 175; *Townshend v. Harrowby* 27 L.J. Ch. 553; see this case stated *Re Dowding* [1904] 1 Ch. 441); there must be something in the covenant, or the instrument containing it, indicating the intention to include the life interest or annuity other than general words, however sweeping, *e.g.* as in *Scholfeld v. Spooner* 26 Ch. D. 94, which last case is also stated in *Re Dowding* *sup.*; *Re Smith* 97 L.J. Ch. 1.

(6) So, such a covenant extending to “any estate or interest whatsoever, in possession, reversion, remainder, or expectancy” of the covenantor in realty, will not comprise lands of which the covenantor is, or may become, tenant in tail in possession (*Hilbers v. Parkinson* 25 Ch. D. 200, approved and followed by C.A., *Re Dunsany* [1906] 1 Ch. 578; but see this last case strongly criticised by Sir Howard Elphinstone, 50 S.J. 570, 591, where he says, “Possibly the decision may be correct on the construction of the covenant, though that is doubted, but the reasons given for the decision are not in accordance with the authorities, including a decision of the House of Lords in *Doe v. Woodroffe* 2 H.L. Ca. 811”).

(7) The principle of *Re Dunsany* was applied in *Re Pearse* [1909] 1 Ch. 304, where Eve J., held that a covenant to settle after-acquired property did not extend to real property abroad which according to the *lex loci* could not be transferred except for adequate pecuniary consideration.

(8) So, such a covenant will not include a mere *spes successionis*, *e.g.* an agreement in a separation deed that the wife, on her husband’s death, should have *jus relictæ* according to Scottish law as though he were then a domiciled Scotsman, for such an agreement does not create property (it only gives the wife a possible claim for damages on the husband’s death), and could not become operative during the coverture (*Re Simpson* [1904] 1 Ch. 1). See further ENTITLED; but see *Re Wyllie* 28 Sc. L.R. 855, cited PROPERTY.

(9) As to a wife’s savings, as regards a covenant to settle, see *Finlay v. Darling* [1897] 1 Ch. 719, cited ENTITLED, followed in *Re Clutterbuck* [1905] 1 Ch. 200; *Askew v. Rooth* L.R. 7 Eq. 426, cited PURCHASED.

(10) As to husband’s covenant to settle furniture, see *Re Magnus* [1910] 2 K.B. 1049, cited ACTUALLY TRANSFERRED.

(11) As to what is a sufficient consideration for a covenant to settle, see *Stephens v. Green* [1895] 2 Ch. 148.

(12) As to construction of marriage articles, and the form of settlement in pursuance of such articles, see Elph. ch. 32; Vaizey, ch. 4; 44 S.J. 357, 358; *Grier v. Grier* L.R. 5 H.L. 688; *Re Gundry* [1898] 2 Ch. 504; *Viditz v. O’Hagan* [1899] 2 Ch. 569, reversed [1900] 2 Ch. 87, distinguished in *Re Bankes* [1902] 2 Ch. 333.

(13) As to construction of testamentary directions to settle realty, see 2 Jarm. (8th ed.) 903); and personalty, *ibid.* 904; *Loch v. Bagley* L.R. 4 Eq. 122.

(14) In a direction to "settle or entail" an estate, the court "would be justified in construing the words 'settled or entailed' as words intended to denote and signify that series of limitations and estates which the settlor has referred to and designated by the term 'settlement' or 'entail' " (*per* Lord Westbury, *Sackville-West v. Holmesdale* L.R. 4 H.L. 566).

(15) "I do hereby settle on my wife," certain property, held by Malins V.-C., to create a valid declaration of trust, though the document was ineffectual as an assignment (*Baddeley v. Baddeley* 9 Ch. D. 113).

(16) "Settle or dispose of any property" (s.1, Accumulations Act 1892 c. 58)); see *Re Llanover* [1903] 2 Ch. 330, cited DISPOSE OF. See Law of Property Act 1925 (c. 20), s.164.

(17) To "tax and settle": see *Re Grant* [1906] 1 Ch. 124, cited TAX. See further *Scholfield v. Spooner* 26 Ch. D. 94, cited SEPARATE USE.

See COMING; STRICT ENTAIL; STRICT SETTLEMENT.

SETTLED. (1) A Fund bequeathed to a married woman for her separate use is otherwise "settled" within an exception in a covenant to settle (*Kane v. Kane* 16 Ch. D. 207): see ALREADY. "Property settled to her separate use": see SEPARATE USE.

(2) "Settled account." The theory of a settled account is generally applicable to a case of mutual debits and credits. Thus, where A owes B money or may owe B money and B owes A money or may owe him money, and in their accounts they strike a balance and agree that balance, that truly represents the financial result of their transaction. It has no application to a case where the whole accounting is to be rendered by one party to the other (*Anglo-American Asphalt Co. v. Crowley, Russell & Co.* 173 L.T. 228). See also ACCOUNT STATED.

(3) "The meaning of a 'settled' estate, whether in legal or popular language, as contradistinguished from an estate in fee simple, is understood to be one in which the powers of alienation, of devising, and of transmission according to the ordinary rules of descent, are restrained by the limitations of the settlement; it would be a perversion of language to apply the term 'settled' to an estate taken out of settlement and brought back to the condition of an estate in fee simple" (*per* Cockburn C.J., delivering the judgment in *Micklethwait v. Micklethwait* 28 L.J.C.P. 127; affirmed 29 L.J.C.P. 75). In that case the phrase to be construed was in a shifting clause in a will, in the event of a second son succeeding to "the property settled on the marriage" of his father.

(4) "Settled estates" (Settled Estates Act 1877 (c. 18), s.2) signified "all hereditaments of any tenure, and all estates or interests in any such hereditaments, which are the subject of a settlement"; see thereon *Re Dendy* 4 Ch. D. 879; *Re Laing* L.R. 1 Eq. 416; *Re Morgan* 49 L.J. Ch. 577; *Re Horn* 29 L.T. 830; *Re Shepherd* L.R. 8 Eq. 571; *Collett v. Collett* L.R. 2 Eq. 203; *Re Greene* 11 L.T. 301; *Re Goodwin* 3 Giff. 620; *Re Williams* 20 W.R. 967; SUCCESSION. When an infant was owner, the land was "settled estate" within that definition (s.41, Conveyancing Act 1881 (c. 41), on which see *Liddell v. Liddell* 52 L.J. Ch. 207; *Re Sparrow* [1892] 1 Ch. 412).

(5) "Settled land" (Settled Land Act 1882 (c. 38), s.2(3)) was "land, and any estate or interest therein, which is the subject of a settlement"; see thereon *Re Wells* 48 L.T. 859; *Re Horne* 39 Ch. D. 84; *Re Freme* [1894] 1 Ch. 1; *Ex p. Castle Bytham* [1895] 1 Ch. 348; *Ex p. Bath and Wells (Bishop)* [1899] 2 Ch. 138. See

Settled Land Act 1925 (c. 18), s.2. When an infant was owner, the land was “settled land” (s.59 of the Act of 1882, on which see *Liddell v. Liddell* and *Re Sparrow* sup.). “Settled land” in s.13(4), Settled Land Act 1890 (c. 69), “comprises all the land which is in the settlement upon the same trusts” (*per* Smith L.J., *Re Gerard* [1893] 3 Ch. 252). See Settled Land Act 1925 (c. 18), Sched. 3, Pt. I, para. 25.

(6) “Settled land,” as used in ss.21(ii), 25, Settled Land Act 1882 (c. 38): see *per* Warrington J., *Re Stafford* [1904] 2 Ch. 80; *Re Gladwin’s Trust* [1919] W.N. 41. See Settled Land Act 1925 (c. 18), s.83.

(7) “The Settled Land Acts 1882 to 1890”: see Sched. 2, Short Titles Act 1896 (c. 14). As to the policy of these Acts, see *per* Lord Macnaghten, *Bruce v. Ailesbury* [1892] A.C. 356, on which case see *per* Farwell J., *Re Calverley* [1904] 1 Ch. 150, cited COTTAGE; *Re Aldam* [1902] 2 Ch. 60, cited FIXED RENT.

(8) “Settled land” (Law of Property Act 1925 (c. 20), s.205(1)(xxvi)): see *Re Ryder & Steadman’s Contract* 96 L.J. Ch. 388; *Re Gaul & Houlston’s Contract* [1928] Ch. 689.

(9) Under Settled Land Act 1925 (c. 18), s.1: see *Earl of Carnarvon’s Settled Estates* [1927] 1 Ch. 138; *Re Ogle’s Settled Estates* 96 L.J. Ch. 113; *Re Bird* 96 L.J. Ch. 127; *Re Alington and London County Council’s Contract* 96 L.J. Ch. 465.

(10) “Settled property,” under Pt. 1, Finance Act 1894 (c. 30) “means property comprised in a settlement . . . , whether relating to real property or personal property, which is a ‘settlement’ within the meaning of s.2, Settled Land Act 1882 (c. 38), or, if it related to real property, would be a ‘settlement’ within the meaning of that section; and includes a settlement effected by a parol trust” (s.22(1)(h)(i)); see thereon *A.-G. v. Owen* and *A.-G. v. Coulson* [1899] 2 Q.B. 253; as “settled property” is used in s.5(1) of the Act, see *Re Webber* [1896] 1 Ch. 914; *Re Campbell* [1902] 1 K.B. 113; *Inland Revenue Commissioners v. Stewart’s Trustees* 36 Sc. L.R. 297; *A.-G. v. Smith* [1923] 2 K.B. 531; as used in s.5(2), *Inland Revenue Commissioners v. Priestley* [1901] A.C. 208; *Inland Revenue Commissioners v. Stewart* [1898] W.N. 198; *Lord Advocate v. Mackenzie’s Trustees* 42 Sc. L.R. 584.

(11) “Settled property”; “other property” (Finance Act 1894 (c. 30), s.16(3) as substituted by the Finance Act 1954 (c. 44), s.33(1)). Where A leaves property to B for life, and after B’s death, as to one-third, for a son of B, the son’s one-third share is not itself “other property” but “settled property” (*Remington v. I.R.C.* [1963] 3 All E.R. 69).

(12) Property settled “before” Finance Act 1894 (c. 30), as used in s.21(1): see *A.-G. v. Dodington* [1897] 2 Q.B. 373.

(13) Shares in a family company transferred to trustees to be held by them under the terms of a trust deed for the settlors beneficially did not become “settled property” within the meaning of s.45 of the Finance Act 1965 (c.25) (*Booth v. Ellard* [1980] 3 All E.R. 569).

(14) “Settled property” (Finance Act 1965 (c. 25), Sched. 7, para. 13 (1)). Land held by two people in fee simple as joint tenants upon trust to sell the same and to hold the net proceeds of sale upon trust for themselves as tenants in common was held “jointly” within the meaning of s.22(5) of this Act, and was not “settled property” within the meaning of Sched. 7, para. 13 (1) (*Kidson v. MacDonald* [1974] Ch. 339).

(15) “Property settled” (s.5, Matrimonial Causes Act 1859 (c. 61)): see *Dormer v. Ward* [1901] P. 20, cited PROPERTY.

(16) “Property settled” (Matrimonial Causes Act 1950 (c. 25), s.25, Matrimonial Causes Act 1965 (c. 72), s.17(1)(b)). A gift of £15,000 made by a wife to a husband

by deed executed the day before the marriage was not property “settled” within the meaning of these sections (*Prescott v. Fellowes* [1958] P. 260).

(17) Bequest by a wife of her husband’s “settled funds”: see *Moysey v. Stuart* 23 L.T. 644.

(18) Insurance to pay “same percentage on this policy as may be settled” by another office means that when that other office has agreed the amount of loss and accepted liability and nothing remains to be done except to pay, then it has “settled” the amount of the claim on its policy; but there is no such settlement if the amount of loss by the insured has been ascertained by arbitration, but the insured’s claim is defeated by its own fraudulent exaggeration (*Beauchamp v. Faber* 3 Com. Ca. 308).

Stat. Def., Finance Act 1965 (c. 25), s.45(1); Income and Corporation Taxes Act 1970 (c. 10), s.167(1); Development Land Tax Act 1976 (c. 24), s.30; Capital Gains Tax Act 1979 (c. 14), ss.17(7), 51, 61(4); Finance Act 1984 (c. 43), s.71, Capital Transfer Act 1984 (c. 51), s.43.

SETTLED (Residence). (1) “Settled” (Immigration Act 1971 (c. 77), s.1(2)) means ordinarily resident without restriction, but a person who has entered illegally cannot be “ordinarily resident” and is not therefore protected by this section (*R. v. Governor of Pentonville, ex p. Azam* [1973] 1 W.L.R. 528). A person who had been permitted to reside for a period in the U.K. through the mistaken belief that he had diplomatic status did not thereby become “ordinarily resident” and was therefore not “settled” in the U.K. within the meaning of s.2(3)(d) of the 1971 Act (*R v. Immigration Appeal Tribunal, ex p. Coomasaru* [1983] 1 W.L.R. 14).

(2) For a person to be “already in the United Kingdom and settled here” within the meaning of the Statement of Immigration Rules for Control on Entry; Commonwealth Citizens (1973) H.C. 79, para. 39 he must be physically present in the country. It is not enough to have settled previously in this country and then to have returned to the country of origin (*R. v. Immigration Appeal Tribunal, ex p. Manek* [1978] 1 W.L.R. 1190).

Stat. Def., Immigration Act 1971 (c. 77), ss.2(3)(d), 33; British Nationality Act 1981 (c. 61), s.50.

SETTLEMENT. (1) “A conveyancer might describe a settlement as an instrument providing for the disposition of property, real or personal, for the purpose of ensuring that the same shall be enjoyed by persons in succession” (*per* Mayo J., in *Re Symon* [1944] S.A.S.R. 102).

(2) Definitions of “settlement” are contained in Settled Land Act 1882 (c. 38), s.2(1), and in Settled Land Act 1925 (c. 18), ss.1, 117. As to which see *Re Ogle’s Settled Estates* [1927] 1 Ch. 233; *Re Monckton’s Settlement* [1917] 1 Ch. 224, followed in *Re Sutton’s Contract* [1921] W.N. 9; but see *Re Carnarvon’s Settled Estates* [1927] 1 Ch. 138, cited **SETTLED**.

(3) The original settlement alone is “the settlement” within the above definitions (*Re Knowles* 27 Ch. D. 707; see *Re Byng* [1892] 2 Ch. 219; **UNDER**); but see *Re Ailesbury and Iveagh* [1893] 2 Ch. 345; *Re Mundy and Roper* [1899] 1 Ch. 275; see hereon *Re Freme* [1894] 1 Ch. 1.

(4) See further, on the above definitions, and as to what is a compound settlement, *Re Ailesbury and Iveagh* sup.; *Re Meade* [1897] 1 I.R. 121; *Re Tibbits* [1897] 2 Ch. 149; *Re Monson* [1898] 1 Ch. 427; *Re Powys-Keck and Hart* [1898] 1 Ch. 617; *Re Du Cane and Nettlefold* [1898] 2 Ch. 96. See also *Re Spencer* [1903] 1 Ch. 75, which case was distinguished in *Re Spearman* [1906] 2 Ch. 502; *Re Cornwallis-West*

and *Munro* [1903] 2 Ch. 150; *Re Wimborne and Browne* [1904] 1 Ch. 537; *Re Stafford* [1904] 2 Ch. 72, on which last case see *Re Coull* [1905] 1 Ch. 712; *Re Phillimore* [1904] 2 Ch. 460; followed in *Re Marshall* [1905] 2 Ch. 325; *Re Cope and Wadland's Contract* [1919] 2 Ch. 376; *Re Curwen and Frame's Contract* 93 L.J. Ch. 290.

(5) When there was a compound settlement and it became necessary to appoint trustees, *e.g.* under s.38, Settled Land Act 1882 or s.34, Settled Land Act 1925, they had to be appointed for the compound settlement, and not merely of one or more of the separate documents composing it (*Re Coull* *sup.*). The phrase “compound settlement” was probably first used by North J., in *Re Byng* [1892] 2 Ch. 219.

(6) “Settlement” (Settled Land Act 1925 (c. 18), s.1): see *Re Booth's Contract* 43 T.L.R. 334; *Re Cowley* [1926] 1 Ch. 725; *Re Cradock* [1926] Ch. 944; *Re Symons* [1927] 1 Ch. 344. A consent order in the Divorce Court under s.192 of the Judicature Act 1925 (c. 49) was a “settlement” under the Settled Land Act.

(7) A married woman's restraint on alienation did not create a “settlement” within the above definitions (*Bates v. Kesterton* [1896] 1 Ch. 159); nor did a limitation to her for life, remainder as she might appoint, remainder to herself in fee (*Re Pocock and Prankerd* [1896] 1 Ch. 302; but see it under TENANT FOR LIFE).

(8) “Settlement,” in ss.32, 33, Settled Land Act 1882 (c. 38) (see Settled Land Act 1925 (c. 18), ss.76, 77), was not to be read in the strict sense of s.2(1), but rather in the wide and popular way of “settled” in s.69, Lands Clauses Consolidation Act 1845 (c. 18) (*Ex p. Castle Bytham* [1895] 1 Ch. 348; *Re Byron* 23 Ch. D. 171).

(9) A legacy which is disclaimed and falls into residue settled by the will forms part of the settled property as from the death of the testator (*Re Parsons* [1944] Ch. 12, cited under COMPETENT TO DISPOSE).

(10) The Finance Act 1894, (c. 30), by s.22(1)(i), adopts the definition of “settlement” as given in s.2, Settled Land Act 1882, *sup.*; see thereon *A.-G. v. Fairley* [1897] 1 Q.B. 698, the ruling in which case is confirmed by s.14, Finance Act 1898 (c. 10), on which see *A.-G. v. Clarkson* [1900] 1 Q.B. 156.

(11) “Settlement” (Finance Act 1894 (c. 30), s.2(1)(b)). Where there has been a partial intestacy, as the result of a decision that certain residuary trusts of a will were void for uncertainty, it was held that the Administration of Estates Act 1925 (c. 23) was not an instrument which, even read together with the valid provisions of the will, could constitute a “settlement” for estate duty purposes (*Re Buttle's Will Trusts* [1977] 1 W.L.R. 1200).

(12) (Finance Act 1936 (c. 34), s.21(9)(b))—see now Income and Corporation Taxes Act 1970 (c. 10), s.437. See *Copeman v. Coleman* [1939] 2 K.B. 484; includes (by definition) a transfer of assets and therefore includes an out-and-out gift (*Hood-Barrs v. Inland Revenue Commissioners* [1946] 2 All E.R. 768). See also *Thomas v. Marshall* [1953] 2 W.L.R. 944 (money put into children's Post Office Savings Bank accounts held to be “settlements”). A transaction entered into under compulsion, *e.g.* under an order of the Divorce Court, is a “settlement” within these sections (*Yates v. Starkey* [1951] Ch. 465).

(13) The power to revoke or otherwise determine a settlement, within s.38(1)(a) of the Finance Act 1938—see now Income and Corporation Taxes Act 1970 (c. 10), s.445—must be found in the settlement (*Inland Revenue Commissioners v. Wolfson* [1949] 1 All E.R. 865); see also *Jenkins v. Inland Revenue Commissioners* [1944] 2 All E.R. 491.

(14) “Settlement” (Finance Act 1938 (c. 46), s.38(2)(a))—see now Income and Corporation Taxes Act 1970 (c. 10), ss.445, 446) did not only denote the document

or instrument (if any) recording the terms of the disposition, trust, covenant, agreement or arrangement. A settlement may be “determined” even though some deed or written instrument remains physically in existence (*I.R.C. v. Kenmore* [1956] Ch. 483). A settlement was not excluded from the operation of this section merely because it was provided in the settlement that it was to be governed by foreign law (*ibid.*).

(15) (Finance Act 1938 (c. 46), s.41(4)(a)(ii)—see now Income and Corporation Taxes Act 1970 (c. 10), s.454(3)). Income apportioned or sub-apportioned to a foreign company is not “income arising from a settlement” (*Howard de Walden (Lord) v. Inland Revenue Commissioners* [1948] 2 All E.R. 825; *I.R.C. v. Pay* (1955), 48 R. & I.T. 412). Nor is a bona fide commercial transaction containing no element of bounty (*Bulmer v. I.R.C.* [1967] Ch. 145).

(16) “Settlement” (Income Tax Act 1952 (c. 10), s.411(2), now Income and Corporation Taxes Act 1970 (c. 10), s.454(3)). A 14 year old actress agreed that her earnings from a film studio should be paid to a company fund for that purpose. She entered into a service agreement with the company for a nominal annual salary. All the capital of the company was vested in the trustees of a settlement of which she was to be the sole beneficiary on reaching the age of 25. This series of transactions was held to be a single “arrangement” and therefore a “settlement” within the meaning of the section. It was also held that by entering into the service agreement with the company and the agreement with the film studio, she had “undertaken to provide funds directly or indirectly for the purpose of the settlement,” and was therefore a “settlor” within the meaning of this section (*I.R.C. v. Mills* [1974] 1 W.L.R. 1342).

(17) An arm’s length arrangement with a charitable company whereby, in consideration of the payment to him of a capital sum, the taxpayer covenanted to make payments to the company over a number of years was held not to be a “settlement” for the purposes of the Income and Corporation Taxes Act 1970 (c. 10), s.457 as it contained no element of bounty (*I.R.C. v. Plummer* [1979] 3 W.L.R. 689). Similarly another arrangement without any element of bounty was held not to be a “settlement” within the meaning of s.22(4)(5); Sched. 7, paras. 17, 21 of the Finance Act 1965 (c. 25) (*Berry v. Warnett* [1978] 1 W.L.R. 957), and a scheme for appointing shares through non-resident trustees, made to avoid capital gains tax, was held not to constitute a “settlement” for the purposes of s.42 of that Act as no bounty was involved (*Chinn v. Hochstrasser* [1979] Ch. 447).

(18) In, and by, s.47, Bankruptcy Act 1883 (c. 52), “settlement” included “any conveyance or transfer of property,” and, as used in that section, “is not confined to a regular settlement with trusts declared and other usual attributes to a formal settlement, but may include any mere transfer of property, where the object is to preserve the property (whatever its form) for the enjoyment of another person” (*per* Cave J., *Re Player No. 2*, 54 L.J.Q.B. 556). Therefore, a gift of money to be invested in a particular manner, *e.g.* in shares in a ship, was a “settlement” within the section (*Re Player No. 1*, 54 L.J.Q.B. 553); but a gift of money to a child for maintenance, or even to set him up in business, was not (*Re Player No. 2*, 15 Q.B.D. 682). So, the gift of an important chattel intended to be preserved by the donee, *e.g.* a present of diamonds by a man to his wife, was such a “settlement,” and so of money given to buy such a chattel (*Ex p. Brown Re Vansittart* [1893] 1 Q.B. 181; *Re Tankard* [1899] 2 Q.B. 57). See further *Ex p. Todd* 19 Q.B.D. 187; *Re Plummer* [1900] 2 Q.B. 790; *Re Harrison and Ingram* [1900] 2 Q.B. 710; *Re Branson* [1914] 3 K.B. 1086.

(19) “Settlement,” under Bankruptcy Act 1914 (c. 59), s.42: see *Re Mathieson* 96

L.J. Ch. 104. S.42(1)) covers an agreement between husband and wife that a house to be purchased in the husband's name shall belong to them jointly, in a case where, apart from the agreement, the wife's share would have been less than half (*Re Densham, ex p. The Trustee of the Bankrupt* [1975] 1 W.L.R. 1519).

(20) As regards a clause in an Inclosure Act, "settlement" has been held to include limitations in a copyhold surrender and grant (*Doe d. Sweeting v. Hellard* 9 B. & C. 803).

(21) "Any settlement" (s.19, Married Women's Property Act 1882 (c. 75)) (with which nothing in the Act was to interfere) included a settlement which was only binding on the husband, e.g. one to which the wife was a party when she was an infant (*Re Stonor* 24 Ch. D. 195; *Stevens v. Trevor-Garrick* [1893] 2 Ch. 307; *Hancock v. Hancock* 38 Ch. D. 78; *Buckland v. Buckland* [1900] 2 Ch. 534; *Re Queade* 54 L.J. Ch. 786, is overruled).

(22) As to what were "settlements" within the meaning of the Matrimonial Causes Act and the Judicature Act 1925 (c. 49), s.192 (see Matrimonial Proceedings and Property Act 1970 (c. 45), s.4), see *Worsley v. Worsley* L.R. 1 P. & D. 648; *Jump v. Jump* 8 P.D. 159; *Chalmers v. Chalmers* 68 L.T. 28; *Dormer v. Ward* [1901] P. 20, cited PROPERTY; *Hubbard v. Hubbard* [1901] P. 157; *Walpole v. Walpole* [1901] P. 196; *Wootton Isaacson v. Wootton Isaacson* [1902] P. 146; *Whitton v. Whitton* [1901] P. 348; and *Constantinidi v. Constantinidi* [1905] P. 253, both cited PROPERTY; *Hodgson-Roberts v. Hodgson-Roberts* [1906] P. 142; *Webb v. Webb* [1929] W.N. 34.

(23) In considering the statutory power of the court to vary under these Acts a marriage settlement upon the dissolution of the marriage the word "settlement" must be construed widely and its meaning not limited to that implied in other Acts of Parliament, or as used by conveyances: see *Bosworthick v. Bosworthick* 95 L.J.P. 171.

(24) An annuity payable to a husband by an insurance company and provided by a lump sum payment by the wife was held not to be a settlement within this section, but an out-and-out gift (*Brown v. Brown* [1937] P. 7).

(25) A settlement not made in contemplation of the marriage in question is not within the section (*Burnett v. Burnett* [1936] P. 1).

(26) A settlement does not cease to be a settlement because it is assignable (*Smith v. Smith* [1945] 1 All E.R. 584).

(27) A conveyance to a husband of a half share in a house bought in the wife's name by her father is a settlement (*Halpern v. Halpern* [1951] P. 204).

(28) A life insurance policy effected by a husband on his life for the benefit of his wife is a settlement (*Gunner v. Gunner and Stirling* [1949] P. 77). See also *Bown v. Bown and Weston* [1949] P. 91. This is so even though the wife's interest is contingent and uncertain (*Lort-Williams v. Lort-Williams* [1951] P. 395).

(29) A conveyance of a house to a husband and wife on trust for sale and to hold the proceeds for themselves as joint tenants was a "settlement" under the Matrimonial Causes Act (*Brown v. Brown* [1959] P. 86; [1959] 2 W.L.R. 776). The word should be liberally interpreted so as to include a matrimonial home bought in the husband's name partly with the wife's money, and accordingly held by him upon trust for sale and upon trust for himself and the wife in undivided shares (*Cook v. Cook* [1962] P. 235).

(30) As regards Stamp Acts, a settlement was "any instrument, whether voluntary or upon any good or valuable consideration, other than a bona fide pecuniary consideration, whereby any definite and certain principal sum of money (whether

charged or chargeable on lands or other hereditaments or heritable subjects or not, or to be laid out in the purchase of lands or other hereditaments or heritable subjects or not), or any *definite and certain amount of stock*, or any security, is settled or agreed to be settled in any manner whatsoever" (Stamp Acts 1870 (c. 97) and 1891 (c. 39), Sched.); as to the words italicised, see *Sanville v. Inland Revenue Commissioners* 10 Ex. 159; *Onslow v. Inland Revenue Commissioners* [1891] 1 Q.B. 239; as to the Stamp Acts see further *Inland Revenue Commissioners v. Oliver* [1909] A.C. 427; DEFINITE. Nothing "is settled or agreed to be settled," within that definition, where proceeds of realty subject to a settlement were invested in stock, and then (on the appointment of a new trustee) there was made the ordinary vesting declaration as to the stock (*Massereene v. Inland Revenue Commissioners* [1900] 2 I.R. 138); see further *Re Stucley* L.R. 5 Ex. 85. See also *Hamilton-Russell v. Inland Revenue Commissioners* [1902] 1 K.B. 142; see *Northumberland v. Inland Revenue Commissioners* [1911] 2 K.B. 348.

(31) (Stamp Act 1891 (c. 39)) A verbal declaration of trust of property A and a settlement of different property B, containing a recital of the declaration of trust and an appointment of new trustees of property A were one "settlement"; and stamp duty was exigible on the value of all the property (*Cohen and Moore v. Inland Revenue Commissioners* [1933] 2 K.B. 126).

(32) Accepting certificates of deduction of tax from payments in respect of royalties does not constitute a "settlement of account" (*Gwyther v. Boslymon Quarries* [1950] 2 K.B. 59).

Stat. Def., Administration of Estates Act 1925 (c. 23), s.55; Land Charges Act 1925 (c. 22), s.20; Land Registration Act 1925 (c. 21), ss.3 and 88; Law of Property Act 1925 (c. 20), s.205; Settled Land Act 1925 (c. 18), s.117; Trustee Act 1925 (c. 19), s.68; Income and Corporation Taxes Act 1970 (c. 10), ss.298, 444, 454(3); Finance Act 1975 (c. 7), Sched. 5, para. 1; Finance Act 1984 (c. 43), s.71; Capital Transfer Act 1984 (c. 51), s.43.

See DEED; EQUITY; MARRIAGE SETTLEMENT; PROTECTOR OF THE SETTLEMENT; STRICT SETTLEMENT; TRUSTEE; VOID; VOLUNTARY SETTLEMENT; ARRANGEMENT.

SETTLER. See SQUATTER.

SETTLOR. (1) "Settlor, disponent" (s.2, Succession Duty Act 1853 (16 & 17 Vict. c. 51)); see *A.-G. v. Maule* 56 L.T. 611.

(2) "Settlor" (Income Tax Act 1952 (c. 10), ss.405(1), 411(2); now Income and Corporation Taxes Act 1970 (c. 10), ss.447(1), 454(3)). A fourteen year old girl, although the sole beneficiary of a settlement, was held not to have had a proper understanding of the arrangements being made on her behalf, and so to have had no intention of providing funds "for the purpose of the settlement." It was therefore held that she was not a "settlor" under these sections (*Mills v. I.R.C.* [1973] 1 Ch. 225). See also *I.R.C. v. Leiner* [1964] T.R. 63. This decision was reversed. See [1974] 1 W.L.R. 1342 and SETTLEMENT, para. (16).

Stat. Def., Income and Corporation Taxes Act 1970 (c. 10), ss.454(3), 444(2); Finance Act 1975 (c. 7), Sched. 5, para. 6; Finance Act 1984 (c. 43), s.71; Capital Transfer Act 1984 (c. 51), s.44.

SEVEN. "Seven clear days before the hearing" (Companies (Winding-up) Rules 1949 (No. 330), r. 28). Saturdays and Sundays are excluded (*Re Display Multiplex* [1967] 1 W.L.R. 571).

SEVERABLE. The mere fact that by the terms of a contract the seller could have converted it into several contracts by his mode of performance did not necessarily make the contract “severable” within the meaning of s.11(1)(c) of the Sale of Goods Act 1893 (c. 71) (*Rosenthal J. & Sons v. Esmail* [1965] 1 W.L.R. 1117).

SEVERAL. (1) Sometimes read “respectively”: see *Woodstock v. Shillito* 6 Sim. 416; 1 Jarm. (8th ed.) 608.

(2) A building contract to do the “several works” therein mentioned or referred to, will not be read distributively as if “several” were “respective”; “several,” in such a connection, means “divers,” and comprehends “all the works that are to be done, and not each portion of them” (*per Mathew J., Cunliffe v. Hampton Wick* 2 Hudson, 263), so that the time during which the builder is to make good defects, runs from the completion of all the works, and not from the completion of that part where the defect arises (*ibid.*).

See **JOINT**; **JOINTLY AND SEVERALLY**; **SEPARATE COVENANT**; **SEVERALTY**.

SEVERAL COVENANT. A several covenant is “a covenant by two or more severally, *i.e.* separately” (Jacob); see further Platt Cov. 115. See **SEPARATE COVENANT**; cp. **JOINT**.

SEVERAL FISHERY. See **FISHERY**.

(1) “Several fishery” is not a term of art (*Holford v. Bailey* 13 Q.B. 426, cited **SOLE**). A several fishery may be granted without the use of the word “several” (*Hanbury v. Jenkins* [1901] 2 Ch. 401).

(2) The owner of a several fishery in a public navigable river is, *prima facie*, owner of the bed of the river (*Hindson v. Ashby* [1896] 2 Ch. 1). So, of a several fishery on the foreshore (*A.-G. v. Emerson* [1891] A.C. 649), or in a non-navigable river (*Ecroyd v. Coulthard* [1898] 2 Ch. 358). See further *Hanbury v. Jenkins* [1901] 2 Ch. 401; **FISHERY**.

SEVERAL ISSUES. See **ISSUES**.

SEVERAL PASTURAGE. See **PASTURAGE**.

SEVERAL TENANCY. See **ENTIRE**.

SEVERALLY. A gift to two or more “severally,” or with a limitation to their heirs “as they shall severally die” (*Sheppard v. Gibbons* 2 Atk. 441) creates a tenancy in common.

See **JOINTLY AND SEVERALLY**; **SUCCESSIVELY**.

SEVERALTY. “He that holds lands or tenements in severalty, or is sole tenant thereof, is he that holds them in his own right only, without any other person being joined or connected with him in point of interest during his estate therein” (2 Bl. Com. 179).

See **SEVERAL**.

SEVERANCE. (1) A contingent legacy only bears interest from its vesting, unless a severance of it be directed for the benefit of the legatee, as distinguished from severance as a mere facility in distribution (*Festing v. Allen* 5 Hare, 575; *Dundas v. Wolfe-Murray* 32 L.J. Ch. 151; *Re Judkin* 25 Ch. D. 743; *Re Dickson* 54 L.J. Ch.

212, 510; *Re Medlock* 55 L.J. Ch. 738); see hereon *Re Marten* 70 L.J. Ch. 354; cp. SPECIFICALLY. A direction “from and after” the death of a tenant for life to “raise and pay” a contingent legacy, does not create such a severance (*Re Inman* [1893] 3 Ch. 518). Cp. TO BE PAID.

(2) As to how severance of a joint tenancy may be effected, see Partition Acts 1868 (c. 40) and 1876 (c. 17); *Re Wilks* [1891] 3 Ch. 59; *Palmer v. Rich* [1897] 1 Ch. 134; PARTITION.

(3) Severance of land by a railway: see MATERIAL DETRIMENT. See *Piggott v. Middlesex County Council* 77 L.J. Ch. 813.

(4) As to apportioning the rent where there is a severance of the land demised, see *Salts v. Battersby* [1910] 2 K.B. 155.

SEVERE. (1) “Severe financial hardship” (Legal Aid Act 1964 (c. 30), s.1(3)(b)). For circumstances in which it was held that the test of “severe financial hardship” was not satisfied, see *Nowotnik v. Nowotnik* [1967] P. 83 and *Re Spurling’s Will Trusts*, *Philpot v. Philpot* [1966] 1 W.L.R. 920. In *Hanning v. Maitland* (No. 2) [1970] 1 Q.B. 580 it was held that in earlier cases the requirement of “severe financial hardship” had been construed too narrowly and that it is not necessary that there should be serious impoverishment before the jurisdiction can be exercised.

(2) “Severe financial hardship (Legal Aid Act 1974 (c. 4), s.13(3)(b)). Having to bear its own costs in an action brought against it by a legally aided plaintiff did not cause the London Transport Executive “severe financial hardship” (*Kelly v. London Transport Executive* [1982], 1 W.L.R. 1055).

SEVERED. (1) Where the owner of land occupied it himself and demised the right of sporting to another, that right was “severed” from the occupation of the land within s.6(2), Rating Act 1874 (c. 54) (*Kenrick v. Guilsfield* 5 C.P.D. 41, distinguishing *R. v. Battle* L.R. 2 Q.B. 8).

(2) Sporting rights, though capable of being granted only by deed, could be “severed” from the occupation of the land within s.6(1) of the Rating Act 1874 (c. 54), by a tenancy agreement under hand reserving the sporting rights (*Cleobury Mortimer Rural District Council v. Childe* [1933] 2 K.B. 368).

SEVERN. Severn “is a wild unruly river, and many times shifts its channel” (Hale, *De Jure Maris*, ch. 4).

See TRIBUTARY; CREEK.

SEWAGE. (1) There was no prescribed definition of “sewage” in the Public Health Act 1875 (c. 55), but in that Act it included liquids (not injurious to health) coming from manufacturing processes, as well as ordinary house sewage (*per* Charles J., *Peebles v. Oswaldthistle* [1897] 1 Q.B. 384; reversed on another point *nom. Pasmore v. Oswaldtwistle* [1898] A.C. 387, and followed on this point in *Eastwood v. Honley* [1900] 1 Ch. 781). *Eastwood v. Honley* was affirmed [1901] 1 Ch. 645. But in *Brook v. Meltham* [1909] A.C. 438, cited SEWER, the Court of Appeal did not approve *Eastwood v. Honley* and in his judgment Fletcher Moulton L.J., said, “sewage matter does not, in my opinion, include manufacturing refuse”; (the Court of Appeal was affirmed in the House of Lords).

(2) “Sewage” (s.17, Public Health Act 1875 (c. 55)): see *Dell v. Chesham Urban District Council* [1921] 3 K.B. 427. See Public Health Act 1936 (c. 49), s.30. See FILTHY WATER.

(3) Where the effluent water from a sewage farm flowed into a pool, the cleans-

ing, levelling and concreting the bottom of that pool to prevent the accumulation of sewage was a work "for sewage purposes" within s.32, Public Health Act 1875 (c. 55) (*Wimbledon v. Croydon* 32 Ch. D. 421). Cp. Public Health Act 1936 (c. 49), s.16.

Stat. Def., Metropolis Management Act 1858 (c. 104), s.32; Public Health Act 1936 (c. 49), s.343; Public Health (London) Act 1936 (26 Geo. 5 and 1 Edw. 8, c. 50), s.81(1).

"Sewage effluent." Stat. Def., Rivers (Prevention of Pollution) Act 1951 (14 & 15 Geo. 6, c. 64), s.11(1); Control of Pollution Act 1974 (c. 40), s.56.

SEWER. (1) " 'Sewer' comes from the word to 'sew,' i.e. to drain, and has a much more extended signification; embracing works on the largest scale, such as draining the Fens of Lincolnshire by means of canals, etc.," (*per* Kindersley V.-C. *Sutton v. Norwich* 27 L.J. Ch. 742, cited by Byrne J., *Newcastle-upon-Tyne v. Houseman* 43 S.J. 140); in this last case the Ouseburn (a tidal stream) was held to be included in "sewer" as used in s.63, Newcastle-upon-Tyne Improvement Act 1870 (c. xc).

(2) As used in the Statute of Sewers (23 Hen. 8, c. 5), a sewer "is a fresh water trench, compassed in on both sides with a bank, and is a small current or little river" (Callis, 80); "a passage or gutter to carry water into the sea or a river" (Cowel). But more largely, it has been said that "sewer" properly means "a sea-fence, a protection against sea tides, whatever its construction" (*per* Toulmin Smith, cited in note E.B. & E. 426, where also is cited Spelman's derivation). It certainly included a wall (*Isle of Ely Case* 10 Rep. 140), and in that comprehensive sense it was used in ss.68, 204, Metropolis Management Act 1855 (c. 120) (*Poplar v. Knight* 28 L.J.M.C. 37). Cp. GUTTER.

(3) A "sewer" is, *prima facie*, a common sewer, and "is common and public in its nature" (*per* Buller J., *Dore v. Gray* 2 T.R. 365).

(4) Broadly speaking and as now most frequently used, "sewer" means the duct that carries away the sewage of more houses, or other buildings, than one; as contrasted with "drain" draining only one: see DRAIN; but see "single private drain," under DRAIN.

(5) As used in the Public Health Act 1875, (c. 55), "sewer" received "the largest possible interpretation" (*per* Kay J., *Acton v. Batten* 28 Ch. D. 283); but even so, it means something that carries away sewage or surface water, which a cesspool, though it drains several houses, does not (*Meader v. West Cowes* [1892] 3 Ch. 18; *Button v. Tottenham* 78 L.T. 470; see hereon *Durrant v. Branksome* [1897] 2 Ch. 291, cited FILTHY WATER). See further *Pakenham v. Ticehurst* 67 J.P. 448; e.g. "sewer" includes an open channel, or surface-water drain, alongside of a public road and taking surface-water from the road and rain water from abutting houses (*Wilkinson v. Llandaff* [1903] 2 Ch. 695; see further *Graham v. Wroughton* [1901] 2 Ch. 451; but see *Wincanton v. Parsons* [1905] 2 K.B. 34); and also a natural stream culverted over, into which crude sewage is discharged may be a sewer: see *A.-G. v. Lewes Corporation* [1911] 2 Ch. 495. See further *Phillimore v. Walford Rural District Council* [1913] 2 Ch. 434, cited STREAM; *Holywood Urban District Council v. Grainger* [1913] 2 Ir. R. 126, cited DRAIN; see further *Turner v. Handsworth Urban District Council* [1909] 1 Ch. 381; *A.-G. v. Peacock* [1926] 1 Ch. 241; *Vare v. Joy* 18 L.G.R. 712; *Clark v. Epsom Rural Council* [1929] 1 Ch. 287. A manhole is part of a "sewer" (*Swanston v. Twickenham* 11 Ch. D. 838); but a rising main sewer, sewage carriers and effluent culverts for sewage farm purposes, are not entitled to the exemption from rates as is an ordinary underground "sewer," for they are adjuncts to the farm and capable of beneficial occupation (*Leicester v. Beaumont Leys* 63

L.J.M.C. 176; *Ystradyfodwg v. Newport* [1900] 1 Q.B. 365, affirmed [1901] 1 K.B. 406; cp. *Ystradyfodwg v. Bensted* [1907] A.C. 264, and *West Kent Main Sewerage Board v. Dartford Union* [1911] A.C. 371, both cited HEREDITAMENT). See further *R. v. Godmanchester L.R.* 1 Q.B. 328; *London County Council v. Erith* [1893] A.C. 562, cited BENEFICIAL.

(6) Where drains from individual terrace houses flowed into a common pipe underneath one of them, that common pipe was held to be a “sewer” within the meaning of the Public Health Act 1875 (c. 55), s.4 which vested in the local authority by virtue of s.13 (*Weaver v. Family Housing Association (York)* (1975) 74 L.G.R. 255).

(7) A pumping station was not a “sewer,” within s.16, Public Health Act 1875 (c. 55), but it was an “apparatus” for distributing or disposing of sewage within s.27 (*King’s College v. Uxbridge* [1901] 2 Ch. 768).

(8) A pipe capable of being used for the drainage of buildings is a “sewer” within the meaning of ss.17 and 343 of the Public Health Act 1936 (c. 49) even though sealed off and not in use (*Blackdown Properties v. Ministry of Housing and Local Government* [1967] Ch. 115). A culvert did not become a “sewer” within the meaning of s.343 by virtue only of the fact that there was a build-up of water due to urban development of the land. There would have had to be some alteration in the essential character of the culvert (*British Railways Board v. Tonbridge and Malling District Council* (1981) 79 L.G.R. 589).

(9) A stream may become a sewer: see *West Riding Rivers Board v. Gaunt* 67 J.P. 183; *Same v. Preston* 69 J.P. 1; *A.-G. v. Lewes* 55 S.J. 703; but see *Leeds Worsted Dyers’ Association v. West Riding Rivers Board* 70 J.P. 480.

(10) The unlawful discharge of sewage into a stream does not make the stream a sewer (*George Legge & Son Ltd. v. Wenlock Corporation* [1938] A.C. 204).

(11) The expression “sewers made by a person for his own profit” (Public Health Act 1875 (c. 55), s.13; Public Health Act 1936 (c. 49), s.20) did not include a sewer constructed with the object of carrying off sewage by drains from houses by or on behalf of people who were owners of the land or prospective builders of houses on that land (*Solihull Rural District Council v. Ford* 30 L.G.R. 483; *Southstrand Estate Development Co. v. East Preston Rural District Council* [1934] Ch. 254).

(12) “Sewer made and used for the purpose of draining, preserving, or improving land, under any local or private Act of Parliament” (s.13(2), Public Health Act 1875, sup.), included a sewer made by a railway company pursuant to s.68, Railways Clauses Consolidation Act 1845 (c. 20), if that Act had been expressly incorporated into the company’s special Act (*London & North Western Railway v. Runcorn* [1898] 1 Ch. 561).

(13) “Sewer” as used in Metropolis Management Act 1855 (c. 120): see *Bateman v. Poplar* 33 Ch. D. 360; *Pilbrow v. St. Leonard, Shoreditch* [1895] 1 Q.B. 433; *St. Martin-in-the-Fields v. Bird* [1895] 1 Q.B. 428, followed in *Harris v. Scarfield* 91 L.T. 536; *Kershaw v. Taylor* [1895] 2 Q.B. 471; *Florence v. Paddington* 12 T.L.R. 30; *R. v. St. Matthew, Bethnal Green* [1896] 2 Q.B. 319; [1898] A.C. 190; *Holland v. Lazarus* 66 L.J.Q.B. 285; *Greater London Property Co. v. Foot* [1899] 1 Q.B. 972. See further *Bullock v. Reeve* 70 L.J.K.B. 42; *Silles v. Fulham* [1903] 1 K.B. 829; *Heaver’s Executors v. Fulham* [1904] 2 K.B. 383; *High v. Billings* 89 L.T. 550; *Harvey v. Busby* 95 L.T. 91; *Kershaw v. Smith & Co. Ltd.* [1913] 2 K.B. 455.

(14) *Semble*, once a sewer, always a sewer: see *St. Leonard, Shoreditch v. Phelan* [1896] 1 Q.B. 533; *Appleyard v. Lambeth* 66 L.J.Q.B. 27, 347.

(15) “Sewers” in proviso 2, s.7, Rivers Pollution Prevention Act 1876 (c. 75), was not confined to sewers proper but included the whole sewerage system of the

authority such as bacterial purification works: see *Brook v. Meltham* [1909] A.C. 438, disapproving *Eastwood v. Honley* [1900] 1 Ch. 781, cited SEWAGE, and *Guthrie v. Brechin* 15 Rettie 385. See Public Health Act 1936 (c. 49), s.26, proviso (c).

Stat. Def., Public Health Act 1936 (26 Geo. 5 and 1 Edw. 8, c. 49), ss.20, 343(1); Public Health (London) Act 1936 (26 Geo. 5 and 1 Edw. 8, c. 50), s.81; Income Tax Act 1952 (15 & 16 Geo. 6 and 1 Eliz. 2, c. 10), s.453(2).

See PUBLIC SEWER.

SEWERED. (1) “What is meant by a street being ‘sewered,’ s.150, Public Health Act 1875 (c. 55), is that it is ‘sewered as a street,’ as a certain space devoted to traffic with an interval between the houses, and as comprising the houses on either side. It would be wrong to say a street is ‘sewered’ when all you have is a series of sewers draining some of the houses on one side in one direction, and the houses of another side in another direction, not forming part of one system” (*per Kekewich J.*, *Handsworth v. Derrington* [1897] 2 Ch. 438). See further SATISFACTION.

(2) “Sewered property”: see *Melbourne & Metropolitan Board of Works v. Metropolitan Gas Co.* [1905] A.C. 595.

SEX. Ownership of lands did not qualify a woman to be put on the parochial electoral register under the Local Government Act 1894 (c. 73); not because that conclusion was opposed to s.3(2), which said that “no person shall be disqualified by sex,” but because a woman-owner not being on the parliamentary register, was not in conformity with s.2(1)—that non-conformity was a fact, and was not less a fact because it resulted from sex (*Drax v. Ffooks* [1896] 1 Q.B. 238). See further PAROCHIAL ELECTOR; *cp. R. v. Crosthwaite* 17 Ir. Com. Law Rep. 151, cited PERSON.

See FEMALE; GENDER; LEGAL INCAPACITY; PROHIBITED; PUER. See Sex Disqualification (Removal) Act 1919 (c. 71).

“Sex discrimination.” Stat. Def., Sex Discrimination Act 1975 (c. 65), ss.1–5.

“Sex article,” “sex cinema,” “sex establishments,” “sex shop.” Stat. Def., Local Government (Miscellaneous Provisions) Act 1982 (c. 30), Shed. 3.

SEXTON. “The sexton, segsten, segerstane, sacristan (*sacrista*, the keeper of the holy things belonging to the divine worship) seems to be the same with the ostiarius (see OSTIARY) in a Roman Church” (Phil. Ecc. Law, 1516). See further 62 J.P. 291; *St. Margaret, Rochester v. Thompson* L.R. 6 C.P. 445; *White v. Norwood Burial Board* 16 Q.B.D. 58.

SEXUAL OFFENCE. Stat. Def., Children and Young Persons Act 1963 (c. 37), s.27(4); Protection of Children Act 1978 (c. 37), s.2(2); Police and Criminal Evidence Act 1984 (c. 60), s.80(7).

SHACK. “‘Shack’ is a peculiar name of common, used in the countrey of Norfolk; and cattell go to shack, is as much to say, as to goe at liberty, or to goe at large” (Termes de la Ley). See further *Corbet’s Case* 7 Rep. 5 a; *Cheesman v. Hardham* 1 B. & Ald. 710, 711.

SHAFT. (1) In the Acts relating to mines, “shaft” includes pit: see Metalliferous Mines Regulation Act 1872 (c. 77), s.41; Coal Mines Regulation Act 1887 (c. 58), s.75.

(2) “Shaft” (Coal Act 1938 (c. 52), s.44(1)). Three disused mine shafts, which

had been filled in and had subsided in varying degrees, were still “shafts” within the scope of this Act (*Gosforth U.D.C. v. National Coal Board* (1958) 172 E.G. 595).

See WORKING SHAFT.

SHAFTESBURY’S (Lord) ACT. Liberty of Religious Worship Act 1855 (18 & 19 Vict., c. 86).

SHALL. (1) Too much care cannot be employed in using or construing this word. Its various meanings range under two general classes according as it is used—

I. As implying futurity; or

II. As implying a mandate, or giving permission or direction.

I. IMPLYING FUTURITY

(2) If something is agreed to be done if or when something else “shall” happen, this contemplates futurity; and things that have happened and are existent at the time of the agreement will not accomplish the condition precedent to the fulfilment of the agreement. Thus where by a marriage settlement certain specific property belonging to the lady was settled, and in a subsequent part of the settlement there was a covenant to settle all property to which the lady “at any time during the said intended coverture shall become seized, possessed of, or entitled unto”; it was held that this covenant did not include property to which the lady was entitled at the date of the settlement and which was not specifically mentioned therein (*Wilton v. Colvin* 25 L.J. Ch. 850, in which case the previous authorities are very fully reviewed; see also *Archer v. Kelly* 29 L.J. Ch. 911). Where, however, there is one title to a property at the date of the settlement but that title becomes changed into another and larger title, then the idea of futurity is accomplished, and property so circumstanced would be comprised in a covenant to settle future acquired property; e.g. where a tenant in remainder at the date of the settlement becomes a tenant in possession after the settlement (*Maclurcan v. Lane* 7 W.R. 135). See further ENTITLED; see also *Re Williams* 80 L.J. Ch. 249.

(3) “Shall be born,” in the absence of a context, are words of futurity; and, in a will, mean persons born after its date (*Gibbons v. Gibbons* 6 App. Ca. 471).

(4) A reference in a will to children who “shall predecease me” referred to events to take place after the making of the will, and therefore excluded a child who had died before the date of the will (*Re McPherson* [1968] V.R. 368).

(5) Where a testatrix provided legacies for her sisters and brothers and made special provisions for any of them who “shall predecease me,” it was held that the word “shall” has a sense which indicates futurity and that therefore the special provisions could not operate in a case where a brother had died before the testatrix had made the will (*Re Rowlands* [1973] V.R. 225).

(6) Sometimes, however, “shall” includes past time. Thus, in a divesting clause, if donee of property “shall become bankrupt,” seems “to mean simply being bankrupt” (per Kindersley V.-C., *Seymour v. Lucas* 29 L.J. Ch. 843); and in such a case it is immaterial whether the bankruptcy has happened before, or shall have happened after, the making of the instrument (*Seymour v. Lucas* sup.; *Manning v. Chambers* 16 L.J. Ch. 245; per Lindley L.J., *Re Akeroyd* [1893] 3 Ch. 363; see HEREAFTER); see also TO BE BORN. So, too, in an independent (as distinguished from a substitutionary) testamentary gift to the issue of a deceased member of a class, the words “shall die” or “shall happen to die” do not necessarily point to a future death, so as inevitably to exclude the issue of a member of the class who may have died before the date of the will (*Loring v. Thomas* 30 L.J. Ch. 789; *Christo-*

pherson v. Naylor 1 Mer. 320, cited SHARE; see further 2 Jarm. (8th ed.) 1328). So, where there was a gift to children, but if any of them “shall predecease me, leaving any child or children living at my death,” such child or children to take parent’s share, the Court of Appeal held that that included the children of a child who was dead at the date of the will (*Re Gorringe* [1906] 2 Ch. 341, following *Loring v. Thomas* sup.); but the House of Lords reversed that decision (*Gorringe v. Mahlstedt* [1907] A.C. 225); *Re Rayner* 134 L.T. 141; *Re Walker* 74 S.J. 106. So, where there is a bequest to two or more named persons at 21, and if either “shall die” under that age then his share to go to the survivor or survivors; if one be dead at the date of the will, his share goes to the survivor or survivors (*Re Sheppard* 1 K. & J. 269). So, “a SURRENDER to such uses as the testator ‘shall’ by will appoint, applied to a will antecedently executed, it being considered that the surrender referred to that will which should be in existence at testator’s death” (1 Jarm. (4th ed.) 58, citing *Spring v. Biles* 1 T.R. 435, n.). So, s.1, Poor Removal Act 1846 (c. 66), excluded from the period necessary to give a pauper a status of irremovability the time during which he “shall” receive relief from a parish in which he did not reside; held, that that included a case where such relief had been given before the Act passed (*R. v. Christchurch* 12 Q.B. 149).

(7) On the other hand, when a statute makes an alteration in the law and says it “shall” have effect, without more, that is a reason for not giving the alteration a retrospective operation (*Re Chapman* [1896] 1 Ch. 323, reversed on another point [1896] 2 Ch. 763). See further as to retrospective operation of statutes, RETROSPECTIVE.

II. IMPLYING A MANDATE

(8) Whenever a statute declares that a thing “shall” be done, the natural and proper meaning is that a peremptory mandate is enjoined. But where the thing has reference to—

- (a) the time or formality of completing any public act, not being a step in a litigation, or accusation; or
- (b) the time or formality of creating an executed contract whereof the benefit has been, or but for their own act might be, received by individuals or private companies or private corporations,

the enactment will generally be regarded as merely directory, unless there be words making the thing done void if not done in accordance with the prescribed requirements.

DIRECTORY

(9) The word “shall” has been held, in the following cases, only directory—

As regards the time fixed for the appointment of overseers under Poor Relief Act 1601 (c. 2), s.1 (*R. v. Sparrow* 2 Stra. 1123), or under Poor Law Overseers Act 1814 (c. 91) (*R. v. Staffordshire* 10 L.J.M.C. 166); and as regards the time fixed by 8 Geo. 4, c. xxix, for the election of guardians for the Borough of Norwich (*R. v. Norwich* 1 B. & Ad. 310), by Highways Act 1772 (c. 78), s.1, for appointment of surveyors of highways (*R. v. Denbighshire* 4 East, 142), or by Quarter Sessions Act 1814 (c. 84), s.1, for holding quarter sessions (*R. v. Leicesters* 5 L.J.O.S.M. 95); “and there can be no doubt that the same construction will be put upon the statutes (Law Terms Act 1830 (c. 70), s.35, and April Quarter Sessions Act 1834 (c. 47)),

regulating the time for holding quarter sessions (see 4 Chitty's Statutes (3rd ed.), 154, citing Dickinson on Quarter Sessions (6th ed.), 65. All the various statutes as to the time for holding quarter sessions have always been held directory," Dick. Q.S. (6th ed.) 65).

(10) As regards the transmission of a conviction by justices to the next quarter sessions, under Malicious Injury to Properties Act 1826 (c. 30), s.40 (*Charter v. Greame* 13 Q.B. 216).

(11) As regards the time for delivering burgess lists and holding courts for their revision under the Municipal Corporations Act 1835 (c. 76), s.18 (*R. v. Rochester* 27 L.J.Q.B. 45; *Hunt v. Hibbs* 29 L.J. Ex. 222).

(12) As regards the time and manner of making out (under ss.5, 13) the lists of persons entitled to vote, or (under ss.47, 48, Parliamentary Voters Registration Act 1843 (c. 18)) the time when the lists of voters are to be signed and delivered to the sheriff or returning officer (*Morgan v. Parry* 25 L.J.C.P. 141; *Brumfitt v. Bremner* 30 L.J.C.P. 33; see further *Wells v. Stanforth* 16 Q.B.D. 244); cp., Representation of the People Act 1949 (c. 68), s.7.

(13) As regards stamping the official mark on the back of a ballot paper (*Akers or Ackers v. Howard* 16 Q.B.D. 739).

(14) As regards the time for depositing the valuation list and transmitting it to the assessment committee pursuant to s.42, Valuation (Metropolis) Act 1869 (c. 67) (*R. v. Ingall* 2 Q.B.D. 199); the time for delivering to the Commissioners of Stamps a return of the names and places of abode of the partners in a banking company pursuant to s.5, Country Bankers Act 1826 (c. 46) (*Bosanquet v. Woodford* 5 Q.B. 310; *Steward v. Dunn* 13 L.J. Ex. 324); the time for registering at the county court a married woman's protection order pursuant to s.21, Matrimonial Causes Act 1857 (c. 85) (*Re Farraday* 31 L.J.P. & M. 7).

(15) As regards the three calendar months after avoidance of a benefice within which the bishop is to direct the surveyor to report upon dilapidations under s.29, Ecclesiastical Dilapidations Act 1871 (c. 43) (*Caldow v. Pixell* 2 C.P.D. 562).

(16) As regards the requirement of 33 Hen. 8, c. 39, that bonds to the King shall be made payable to him, his heirs or executors, a bond to him, his heirs or successors being held to be within the statute (*Yale v. The King* 6 Brown P.C. 27, 28).

(17) As regards consent of father to the marriage of a minor under s.16, Marriage Act 1823 (c. 76) (*R. v. Birmingham* 6 L.J.O.S.M.C. 67). Cp. Marriage Act 1949 (c. 76), s.3, Sched. 2.

(18) As regards the form of making a poor rate, under s.2, Parochial Assessments Act 1836 (c. 96)—except the signature of justices which is peremptory (*R. v. Fordham* 9 L.J.M.C. 3).

(19) As regards the obligation to produce overseers' certificate, under s.2, Beer-house Act 1840 (c. 61), prior to the excise granting a licence to sell beer, etc., under that statute (*Thompson v. Harvey* 28 L.J.M.C. 163).

(20) As regards the questions to be asked a recruit under s.55, Mutiny Act 1850 (c. 5).

(21) As regards the analyst's certificate under s.18, Sale of Food and Drugs Act 1875 (c. 63), if the justices find that an omission therefrom is immaterial (*Sneath v. Taylor* [1901] 2 K.B. 376); see Food and Drugs, etc. Act 1928 (c. 31), s.17(3).

(22) As regards the pecuniary penalty to be specified in a contract by an urban authority under s.174(2), Public Health Act 1875 (c. 55) (*Soothill v. Wakefield* [1905] 2 Ch. 516, cited SUPPLY). Cp. Local Government Act 1933 (c. 51), s.266.

(23) As regards the particulars to be stated in a doctor's certificate for the deten-

tion of a lunatic under s.46, Lunatics Act 1845 (c. 100), see now s.28(2), Lunacy Act 1890 (c. 5) (*Re Shuttleworth* 9 Q.B. 651).

(24) As regards taking security on an appointment by quarter sessions of a county treasurer under County Rates Act 1738 (c. 29), s.6 (*R. v. Patteson* 2 L.J.K.B. 33).

(25) As regards the Court of Bankruptcy, "one would not hold it to be obligatory if it could be avoided" (*per* Esher M.R., *Re Thurlow* 64 L.J.Q.B. 481), in which case it was held that "shall adjudge" (s.20(1), Bankruptcy Act 1883 (c. 52); s.18, Bankruptcy Act 1914 (c. 59)) does not deprive the court of the power to adjourn given by s.105(2) ([1895] 1 Q.B. 724; but see *Re Pinfold* [1892] 1 Q.B. 73, para. (37), *post*). So it was directory as regards the formalities prior to a sale by a bankruptcy assignee under s.7, Insolvent Debtors Act 1820 (c. 119) (*Doe d. Phillips v. Evans* 2 L.J. Ex. 179), and is so as regards s.72(1), Bankruptcy Act 1883 (c. 52) (now s.82(1) of Act of 1914, *sup.*) (*per* Esher M.R., *Re Gallard* [1892] 1 Q.B. 532).

(26) As regards the things to be done by a local board before entering into a contract under s.85, Public Health Act 1848 (c. 63) (*Nowell v. Worcester* 9 Ex. 457; but see *Frend v. Dennett* 27 L.J.C.P. 314, *inf.*, para. (49) and note para. (55)). Cp. Local Government Act 1933 (c. 51), s.266).

(27) As regards registration of mortgages and charges of a joint stock company, under s.43, Companies Act 1862 (c. 89) (see s.104, Act of 1948 (c. 138)) (*Ex p. Valpy & Chaplin* 7 Ch. 289; *Wright v. Horton* 12 App. Ca. 371); the principle of this case was followed as to s.41 in *Randall v. British & American Shoe Co.* [1902] 2 Ch. 354, see Companies Act 1948 (c. 38), s.108.

(28) As regards the provision of s.108 of the statute 6 & 7 Will. 4, c. cviii incorporating the Thames Haven Dock & Railway Company, that the business of the company should be carried on by twelve directors (*Thames Haven Dock & Railway v. Rose* 12 L.J.C.P. 90; but this case was not followed in *Re Alma Spinning Co.* 50 L.J. Ch. 171, cited QUORUM).

(29) As regards the provisions in a private Act as to the mode of keeping the register of proprietors in an incorporated company (*Southampton Dock Co. v. Richards* 1 M. & G. 448; *London Grand Junction Railway v. Freeman* 2 *ibid.* 606).

(30) As regards the countersigning by secretary of a bill or note of a joint-stock company, pursuant to s.45, Joint Stock Companies Act 1844 (c. 110) (*Allen v. Sea Assurance* 19 L.J.C.P. 305; *Aggs v. Nicholson* 25 L.J. Ex. 348).

(31) As regards s.4, Private Bill Deposits Act 1838 (c. 117) (*Goodman v. De Beauvoir* 4 Ry. Ca. 384).

(32) If a statute directs the time or manner of doing a thing, the penalty (if any) for non-compliance with the direction will be incurred, though such non-compliance may not affect the validity of the Act (*Hunt v. Hibbs* 29 L.J. Ex. 222). See further DIRECT.

(33) For an example of a peremptory "shall" being controlled otherwise by a context, see *York & North Midland Railway v. The Queen* 1 E. & B. 863. See also *Re Davis* 75 C.L.R. 409.

(34) "Shall proceed to the summary trial of the information" (Magistrates' Courts Act 1952 (c. 55), s.19(5)). The word "shall" in this subsection was not mandatory to the extent of depriving the magistrate of the right to permit the accused to change his mind and opt for trial by jury after all (*R. v. Craske, ex p. Metropolitan Police Commissioner* [1957] 2 Q.B. 591).

(35) "Shall" (R.S.C., Ord. 19, r. 7(1)) is here not mandatory but directory, and does not deprive the court of the discretionary power to extend a party's time to plead where it is just to do so (*Wallersteiner v. Moir* [1974] 1 W.L.R. 991).

Cp. MUST.

PEREMPTORY

(36) The word “shall” and words in their ordinary meaning obligatory, have, in the following cases, been held peremptory—

As regards the three days, inclusive of Sunday, within which an appeal case from justices “shall” be transmitted to the court and notice given to the respondent, pursuant to s.2, Summary Jurisdiction Act 1857 (c. 43) (*Peacock v. The Queen* 27 L.J.C.P. 224; *Woodhouse v. Woods* 29 L.J.M.C. 149; *Morgan v. Edwards* *ibid.* 108; *Pennell v. Uxbridge* 31 L.J.M.C. 92; see further TRANSMIT), except where the appellant has done all that he can in order to comply with the statute (see judgment *Morgan v. Edwards*), and is hindered by the offices of the court being closed (*Mayer v. Harding* L.R. 2 Q.B. 410), or by respondent not being to be found, and service of notice of appeal in that case being effected on his solicitor within the three days (*Syred v. Carruthers* 27 L.J.M.C. 273). See now Magistrates’ Courts Act 1952 (c. 55), s.87.

(37) As regards requirement in Summary Jurisdiction Rules 1886, r. 18, that application for special case “shall be made in writing” (*South Staffordshire Waterworks Co. v. Stone* 19 Q.B.D. 168; *Lockhart v. St. Alban’s* 21 Q.B.D. 188). See now Magistrates’ Courts Rules, 1952 (S.I. No. 2190, r. 61).

(38) As regards notice of appeal under s.8, Mayor’s Court of London Procedure Act 1857 (c. clvii), the time for which cannot be extended (*Kirby v. North British Insurance* [1896] 2 Q.B. 99), and so of the deposit for security for costs under the same section (*Morgan v. Bowles* [1894] 1 Q.B. 236). The right of appeal in an original mayor’s court action has not been extended by the rules made under the Mayor’s and City of London Court Act 1920 (c. cxxxiv): see *Newman v. Klausner* [1922] 1 K.B. 228.

(39) As regards the time for an appeal from county court and giving security for its cost under s.14, County Courts Act 1850 (c. 61) (*Stone v. Dean* 27 L.J.Q.B. 319; see also *Barker v. Palmer* 51 L.J.Q.B. 110; see s.105, County Courts Act 1934 (c. 53)).

(40) As regards adjudication in bankruptcy (s.20(1), Bankruptcy Act 1883 (c. 52)) being consequent when the creditors have not availed themselves of the opportunity by that section given them of deciding otherwise (*Re Pinfold* [1892] 1 Q.B. 73; but see *Re Thurlow* para. (23), ante); see now s.18, Bankruptcy Act 1914 (c. 59).

(41) As regards the 21 days, within which, after its receipt, the bishop is to send to an accused clergyman a copy of the complaint against him, pursuant to s.9, Public Worship Regulation Act 1874 (c. 85) (*Howard v. Bodington* 2 P.D. 203).

(42) As regards the time for taxing costs under s.3, Parliamentary Costs Act 1865 (c. 27) (*Williams v. Swansea Canal Navigation* L.R. 3 Ex. 158).

(43) As regards the provision (s.1, Justices’ Clerks’ Fees Act 1753 (c. 14)) that table of justices’ clerks’ fees should be made at one quarter sessions and should be approved at “the next succeeding quarter sessions” (*Bowman v. Blyth* 26 L.J.M.C. 57; *ibid.* 21).

(44) As regards the holding by adjournment of general annual licensing meeting in March, for Middlesex and Surrey, and in August or September elsewhere (*R. v. Groom* [1901] 2 K.B. 157).

(45) As regards confirmation of provisional licence under s.22, Licensing Act 1874 (c. 49), when the premises are built “in accordance with the plans,” etc. (*per Coleridge C.J., R. v. London Justices* 24 Q.B.D. 341, cited LICENSING). See Licensing (Consolidation) Act 1910 (c. 24), s.33.

(46) As regards the number of overseers to be appointed by the Poor Relief Act 1601 (c. 2), s.1 (*R. v. Loxdale* 1 Burr. 445).

(47) As regards fine to be imposed “not less” than a stated amount: see NOT LESS.

(48) As regards indorsement on appeal case stated by revising barrister pursuant to s.42, Parliamentary Voters Registration Act 1843 (c. 18) (*Wanklyn v. Woollett* 16 L.J.C.P. 114; but see *Burton v. Brooks* 21 L.J.C.P. 7, and *McKeowne v. Bradford* 7 Ir. Jur. N.S. 169).

(49) As regards the form of a municipal nomination paper under s.1(2), Municipal Elections Act 1875 (c. 40), (*Henry v. Armitage* 52 L.J.Q.B. 165; reversed, but only on the facts, 32 W.R. 192).

(50) As regards the requirements for creating a mortgage of a ship under ss.55, 66, Merchant Shipping Act 1854 (c. 104), see now ss.24, 31, Merchant Shipping Act 1894 (c. 60) (*Liverpool Borough Bank v. Turner* 29 L.J. Ch. 827; 30 *ibid.* 379; but see “beneficial interest,” under BENEFICIAL).

(51) As regards a company’s obligation to forward to Registrar a list of its members pursuant to s.26, Companies (Consolidation) Act 1908 (c. 69), see Companies Act 1948 (c. 38), s.124: see *Park v. Lawton* 80 L.J.K.B. 396.

(52) As regards requirement that contracts above £10 by local board should be under seal, etc., pursuant to s.85, Public Health Act 1848 (c. 63) (*Frend v. Dennett* 27 L.J.C.P. 314; but see *Nowell v. Worcester* 9 Ex. 457, sup., para. (24), and inf., para. (55)); and under s.174, Public Health Act 1875 (c. 55), that every contract by urban authority above £50 shall be under seal (*Young v. Royal Leamington Spa* 8 App. Ca. 517, following *Hunt v. Wimbledon* 4 C.P.D. 48. See also EXCEED; *Melliss v. Shirley* 16 Q.B.D. 446; see further *Brooks v. Torquay* [1902] 1 K.B. 601, cited SEAL), and shall specify its work, materials, matter or things, price, time for performance, and pecuniary penalty for non-performance (*British Wire Co. v. Prescott* [1895] 2 Q.B. 463); but see as to s.174, Public Health Act 1875, *Soothill v. Wakefield* [1905] 2 Ch. 516; cp. Local Government Act 1933 (c. 51), s.266.

(53) It was said by counsel in *Young v. Royal Leamington Spa* sup., that *Nowell v. Worcester* sup., might be considered as overruled by *Frend v. Dennett* sup. But it is submitted that the two cases are quite in harmony. The first case (*Nowell v. Worcester*) decided that the preliminaries which a local board were required to observe under s.85, Public Health Act 1848 (c. 63), before entering into a contract were directory and, so to speak, a matter between themselves and their constituents; but the latter case (*Frend v. Dennett*) decided that the contract itself must be vouched in the manner prescribed by the section.

(54) As regards registration in Natal of document regulating community of goods between spouses (*Taylor v. Sturrock* [1900] A.C. 225, cited VOID).

(55) As regards the provisions for arbitration in s.180, Public Health Act 1875 (sup.) (*Re Gifford and Bury* 20 Q.B.D. 368).

(56) As regards an arbitration agreement: see *Crump v. Adney* 2 L.J. Ex. 150.

(57) As regards the formalities of sealing and signature by directors of contracts by incorporated railway and dock companies (*Cope v. Thames Haven Dock & Railway* 3 Ex. 841; *Diggle v. London & Blackwall Railway* 5 Ex. 442; *Finlay v. Bristol & Exeter Railway* 7 Ex. 409).

(58) It seems difficult to reconcile *Cope v. Thames Haven Dock & Railway* and the other two cases cited with it sup., with *Cole v. Greene*, *Allen v. Sea Assurance* and *Aggs v. Nicholson* sup., or with sound reasoning. There seems to be no public policy (like that so forcibly dwelt on in the judgment of Lindley L.J., in *Young v. Royal Leamington Spa*) in letting a railway company keep an advantage for which

they have not paid, simply because the contract under which they have obtained that advantage happens to lack the formality required by the Act establishing the company. The cases now under criticism seem those referred to by Lindley L.J. (51 L.J.Q.B. 296), where, referring to executed contracts for corporations, he says: "The cases on this subject are very numerous and conflicting, and they require review and authoritative exposition by a court of appeal."

(59) There is no magic in incorporation as distinguished from any other mode of association for private profit; and it is suggested that *Cope v. Thames Haven Dock & Railway* and other similar cases should be overruled, and that the rule of such cases as *Aggs v. Nicholson* should be adopted for all kinds of association for private purposes, whether by incorporation or otherwise, so that the cannon of construction should run thus:

In a contract entered into by a public body, whether corporate or incorporate, for the public benefit, the formalities which the legislature says "shall" be observed are obligatory, and in their absence no rights arise whether the contract be executed or executory: but

In a contract entered into by a private association, whether corporate or incorporate, the formalities prescribed (whether by statute, articles of association, or otherwise) for the validation of its contracts are matters chiefly exigent as between the direction and its constituents; and therefore if the contract be executed the private association must pay on the assumpsit *quasi ex contractu*, even if not *ex contractu*, though the prescribed contract formalities may be absent; but no rights would arise out of such a contract the prescribed formalities of which were absent so long as such contract remained merely executory. See hereon observations of Brett L.J., in *Hunt v. Wimbledon* 48 L.J.C.P. 211; see also *Bourne v. St. Marylebone* 72 J.P. 306; *Henderson v. Australian Royal Mail Steam Co.* 5 E. & B. 409; but see *Church v. Imperial Gas Light & Coke Co.* 7 L.J.Q.B. 118.

(60) For a curious instance of "shall" being used, in the same section, as compulsory and also as optional, see *per* Bowen L.J., *Cooke v. New River Co.* 38 Ch. D. 56; on appeal, 14 App. Ca. 698.

(61) As regards the ordinary requirement in a building contract against extras without written instructions of the architect (*Lamprell v. Billericay Union* 3 Ex. 283).

(62) *Semble*, as regards the notice by a tenant of an intended claim under s.7, Agricultural Holdings (England) Act 1883 (c. 61) (*Scholfield v. Hincks* 37 W.R. 157). See now Agricultural Holdings Act 1948 (c. 63), s.70.

(63) "Shall" read "should": see *Lomax v. Holmeden* 3 P. Wms. 176.

(64) "Shall belong": see *Re Gifford* 40 Sc. L.R. 476, cited BELONG.

(65) "Shall thenceforth cease and determine": see *Re Chapman* [1904] 1 Ch. 431, cited FORFEITURE.

(66) "They (*i.e.* justices at quarter sessions) shall then and there finally hear and determine the same": see *Redheugh Colliery Ltd. v. Gateshead Assessment Committee* [1925] A.C. 309.

(67) "Shall insure": see *Clark v. Hume* 40 Sc. L.R. 229, cited INSURE.

(68) "Shall issue" (Legal Aid (General) Regulations 1950 (No. 1359), reg. 5) did not mean that from the time that the duty to issue a legal aid certificate arose a certificate should be deemed to have been issued (*Lacey v. W. Silk & Son Ltd.* [1951] 2 All E.R. 128).

(69) "Shall pay" (the old R.S.C., Ord. 42, r. 1(2)) did not impose an obligation subject to a penalty (*Re A Debtor* (No. 277 of 1950), *Ex p. The Debtor v. Liguori* [1951] Ch. 95). See now R.S.C. Ord. 45, r. 2 where "shall" is replaced by "must."

See SHALL AND LAWFULLY MAY; MAY; WILL.

SHALL AND LAWFULLY MAY; SHALL AND MAY; SHALL AND MAY AND THEY ARE HEREBY EMPOWERED. (1) “The words ‘shall and lawfully may’ are in their ordinary import obligatory, and ought according to established rule, to have that construction, unless it would lead to some absurd or inconvenient consequence, or be at variance with the intent of the legislature, to be collected from other parts of the Act” (*per* Parke B., delivering the judgment in *Chapman v. Milvain* 5 Ex. 61). Accordingly, it was held that those words in s.9, Country Bankers Act 1826 (c. 46), rendered it necessary for actions by or against a banking company to be brought in the name of its public officer. See also *Steward v. Greaves* 12 L.J. Ex. 109; *Re London & Eastern Banking Corporation* 27 L.J. Ch. 457; *Watts v. Shuttleworth* 29 L.J. Ex. 229.

(2) So the words “shall and may,” in Joint Stock Companies Act 1844 (c. 110), s.66, were held obligatory (see MAY). But though for the offence of allowing an unauthorised person to act in his name, a solicitor “shall and may be struck off the roll, and for ever after disabled from practising” (s.32, Solicitors Act 1843 (c. 73)), yet the infliction of so heavy a penalty has been held not imperative, so that a lesser punishment might be imposed (*Re Grayston* 58 L.J.Q.B. 451, n.; *Re Lamb* 23 Q.B.D. 477, on which last case see *Re Kingdon and Wilson* [1902] 2 Ch. 242; *Re Sykes* 34 S.J. 285); on the other hand, “shall and may” has been held imperative (*Re Two Solicitors* 28 S.J. 90; *Re Eede* 25 Q.B.D. 228; *Re Kelly* [1895] 1 Q.B. 180); but see *Re Two Solicitors* 53 S.J. 342. Probably it may now be affirmed that “shall and may,” in s.32, Solicitors Act 1843 (c. 73), was imperative (*Re Burton & Blinkhorn* [1903] 2 K.B. 300).

(3) The words in Poor Relief Act 1819 (c. 12), s.17, whereby churchwardens and overseers “shall and may and they are hereby empowered” to accept, take, and hold, real property belonging to a parish, were imperative (*St. Nicholas, Deptford v. Sketchley* 8 Q.B. 394).

See SHALL; MAY; IT SHALL BE LAWFUL.

SHALL AND MAY BE LAWFUL. See IT SHALL BE LAWFUL.

SHALL AND WILL. “Shall and will release,” *semble*, is not an actual release, but only a covenant to release (*per* Holroyd J., *Thomas v. Courtnay* 1 B. & Ald. 8).

SHALL BE. (1) “Shall be appointed for the ensuing year” means for that year only, but not that an appointee should continue, in all circumstances, throughout the year (*Manton v. Brighton Corporation* [1951] 2 K.B. 393).

(2) “Shall be liable,” for the construction of these words in a will: see *Re Fenwick* [1923] 2 Ch. 775.

(3) “Shall be my next-of-kin . . .”: see *Hutchinson v. National Refuges for Homeless and Destitute Children* [1902] A.C. 794.

(4) “Shall be prosecuted summarily”: see *R. v. Goldberg* [1904] 2 K.B. 866, cited SUMMARILY.

(5) “Shall be resold,” in conditions of sale of a sale by auction: see *Robinson, Fisher & Harding v. Behar* [1927] 1 K.B. 513.

(6) “Shall not be registered”: see *Re a Bankruptcy Notice* 93 L.J. Ch. 497.

“Shall be begotten”: see TO BE BORN.

“Shall be born”: see SHALL; TO BE BORN.

“Shall be brought”: see BROUGHT.

“Shall be settled”: see AGREED AND DECLARED; SETTLED.

SHALL BECOME. (1) “Shall become bankrupt.” Where an annuity was given by will to a beneficiary for a protected life interest with a gift over on bankruptcy, etc., and the annuitant, being an undischarged bankrupt at the testator’s death, obtained his discharge before anything was payable to him under the terms of the will in respect of the annuity, the gift over was held to operate immediately on the testator’s death. A bankrupt beneficiary in such a case can only acquire an interest if his bankruptcy is annulled (*Re Walker* [1939] Ch. 974).

(2) “Shall become entitled”: trusts declared by a will of a share to which a beneficiary “shall become entitled” under the will, fail, and the gift lapses, if the beneficiary predeceases the testator (*Re Taylor* [1931] 2 Ch. 237). See ENTITLED.

See BECOME.

SHALL DIE. In the phrase “shall die in my lifetime,” in a will, the words “shall die” are equivalent to “shall be dead,” and where there was a bequest of residuary estate to the children of any child of the testator who “shall die in my lifetime,” and one such child died before he made his will, held that the children of such deceased child were entitled to the share which their father would have taken: see *Metcalf v. Williams* [1914] 2 Ch. 61. But this case was distinguished in *Re Brown* [1917] 2 Ch. 232, where it was held that the words must be construed in their natural future sense and did not include a child known to be dead at the time when the will was made. See also *Re Walker* [1930] 1 Ch. 469; *Re Birchall* [1940] Ch. 424; *Re Booth’s Will Trusts* 163 L.T. 77.

SHALL HAVE BEEN. This phrase gives a statute a retrospective operation, e.g. a married woman whose husband “shall have been” convicted of an aggravated assault upon her, s.4, Summary Jurisdiction (Married Women) Act 1895 (c. 39) (*Lane v. Lane* [1896] P. 133).

See further *R. v. Birwistle* 58 L.J.M.C. 158; cp. HAS BEEN; IS.

SHALL THINK FIT. See THINK FIT.

SHALLOW HARBOURS. See HARBOURS.

SHAM. “I apprehend that, if it has any meaning in law, it means acts done, or documents executed by the parties to the ‘sham’ which are intended by them to give to third parties or to the court the appearance of creating between the parties legal rights and obligations different from the actual legal rights and obligations (if any) which the parties intend to create” (*per* Diplock L.J. in *Snook v. London and West Riding Investments* [1967] 2 Q.B. 786).

SHAMEFUL. A correct newspaper report headed “shameful conduct” is libel, though the report itself be protected (*Clement v. Lewis* 3 B. & Ald. 702).

SHAPE. “Shape or configuration,” of an article of manufacture, preamble to s.2, Copyright and Designs Act 1843 (c. 65) (see DESIGN): see *Millingen v. Picken* 14 L.J.C.P. 254; *Rogers v. Driver* 16 Q.B. 102; *Windover v. Smith* 11 W.R. 323; *Margetson v. Wright* 2 D.G. & S. 420; *Moody v. Tree* 40 W.R. 558. See PATTERN. See also *Walker v. Falkirk Iron Co.* 4 Pat. Cas. 390; *Re Clarke* [1896] 2 Ch. 38, cited NEW DESIGN; see also ORIGINAL. See Registered Designs Act (c. 88), s.1(3).

SHARE. (1) “ ‘Share,’ prima facie, would not apply to real estate” (*per* Turner V.-C., *Stokes v. Salomons* 20 L.J. Ch. 343). See also *Re Woods* (deceased) [1941] St. R. Qd. 129.

(2) Where there is a testamentary gift to two or more, and the will speaks of the “share” of either, a tenancy in common is created (*Gnat v. Laurence Wight*. 395; *Ive v. King* 21 L.J. Ch. 560; *Hogben v. Neale* L.R. 11 Eq. 48; see *Bennett v. Houldsworth* 55 S.J. 270, cited TENANT IN COMMON; see Law of Property Act 1925 (c. 20), ss.34–36). So, a bequest in shares to be appointed by a person who is not named, or who fails to appoint, creates a tenancy in common in equal shares (1 Jarm. (8th ed.) 477, citing *Robinson v. Wheelwright* 21 Bea. 214; *Salisbury v. Denton* 26 L.J. Ch. 851). The words “in equal shares”, signify a tenancy in common (*Re Davies* [1950] 1 All E.R. 120).

(3) A substitutional bequest of a legatee’s “share” will not take effect if the legatee die in the testator’s lifetime, because in that case the legatee could not take a share (*Re Roberts, Tarleton v. Bruton* 27 Ch. D. 346; affirmed 30 Ch. D. 234, following *Stewart v. Jones* 3 D.G. & J. 532, and dissenting from *Unsworth v. Speakman* 4 Ch. D. 620). But would this be so if the legatee were a child of the testator, leaving issue living at testator’s death? See s.33, Wills Act 1837 (c. 26). Observe also that *Re Roberts* and *Stewart v. Jones* were distinguished in *Re Pinhorne* [1894] 2 Ch. 276, which last case was followed in *Re Powell* [1900] 2 Ch. 525; *Re Roberts, Re Pinhorne* and *Re Powell* were considered in *Re Whitmore* [1902] 2 Ch. 66. See also *Re Sheppard* 1 K. & J. 269, cited SHALL; *Neatherway v. Fry* 23 L.J. Ch. 222; 1 Jarm. (8th ed.) 442; *Re Currie* [1910] 1 Ch. 329; cp. EXECUTOR.

(4) Where a class of beneficiaries under a will is to be ascertained at the testator’s death (or, *semble*, at any other definite time), but the period of distribution is postponed to a later time, a substitutional gift of the “shares” of deceased beneficiaries applies, prima facie, only to beneficiaries who become members of the class and die before the period of distribution (*per* North J., *Re Hannam* [1897] 2 Ch. 39; vindicating *Thornhill v. Thornhill* 4 Mad. 377, and the opinion of Romilly M.R., in *Ive v. King* sup., and in *King v. Cleaveland, No. 1*, 28 L.J. Ch. 74; and distinguishing *Smith v. Smith* 6 L.J. Ch. 175, *Collins v. Johnson* 4 L.J. Ch. 226, n., *Jones v. Frewin* 12 W.R. 369, and *Habergham v. Ridehalgh* L.R. 9 Eq. 395).

(5) “Share of residue.” A forfeited share of the fee of certain residue assessed to the remaining residuary legatees and did not fall into intestacy (*Watson’s Trs. v. Watson* 1961, S.L.T. (Notes) 53).

(6) As to the value of the word “share,” in a substitutionary bequest to the issue of a deceased member of a class, for the purpose of avoiding the rule in *Christopher v. Naylor* (1 Mer. 320; 2 Jarm. (8th ed.) 1313 *et seq.*), i.e. that persons claiming as substitutionary legatees must point out the original legatee in whose place they demand to stand, and such original legatee must have been living at the date of the will, e.g. under a gift to children with a substitution of their issue of any as “shall happen to die in my lifetime,” only the issue of the children living at the date of the will can claim: see *Re Smith* (in note to *Re Sibley*) 5 Ch. D. 494; see on this case *Re Webster* 23 Ch. D. 737. But *Re Smith* was not followed by Stirling J., in *Re Chinery* (39 Ch. D. 614), nor by the Court of Appeal in *Re Musther* (43 Ch. D. 569), nor by North J., in *Re Brown* (58 L.J. Ch. 420); see further *Re Wood* [1894] 3 Ch. 381; see further *Re Schofield* [1918] 2 Ch. 64; *Re Ward* [1920] 1 Ch. 334. See Law of Property Act 1925 (c. 20), ss.34–36.

(7) The “share” of a residuary legatee consists of what remains after all equities between him and the estate have been settled (*Willes v. Greenhill* 29 Bea. 376).

(8) “Share” does not carry an accruing share (Wms. Ex. (12th ed.) 786–7; *Re*

Lybbe, Kildahl v. Bowker [1954] 1 W.L.R. 573) unless aided by the context (3 Jarm. (8th ed.) 1976, 1977); but “it seems that ‘share and interest’ will carry accrued shares *proprio vigore*” (*ibid.* 1978), e.g. an assignment of “all the part, share and interest” of A in a reversionary bequest, carried an accrued share (*Re Lawrence* 45 S.J. 78). See further ACCRUE.

(9) “Share or interest appointed to him . . . or his issue.” In a hotchpot clause, was held not to include a contingent interest appointed to issue; nor a contingent general power of appointment given in certain events by the appointment (*Re Gordon* [1942] Ch. 131).

(10) A devise of “my share” would, even before the Wills Act 1837 (c. 26), generally carry the fee (2 Jarm. (4th ed.) 285): see hereon *Orange v. Martyn* [1886] W.N. 8.

(11) Agreement by a father in marriage articles to leave the bride “a share” of his property does not mean an equal share; it means “some share—some part,” and is satisfied by a substantial legacy (*Re Fickus* [1900] 1 Ch. 331); if the phrase were “her share” it would, probably, mean the share of his personalty to which his daughter would be entitled if he were to die intestate (*Laver v. Fielder* 32 L.J. Ch. 365).

(12) “Share” in a forfeiture clause if legitim should be claimed in opposition to the document; held, on the context to include not only the liferent given to the claimer but also the corpus given to his issue or other next-of-kin (*Re M’Caull* 38 Sc. L.R. 107).

(13) Where a “power simply authorises an appointment of the shares to be taken by the objects, the power necessarily ceases when there is only one object, for he, of course, must take the whole” (Sug. Pow. (8th ed.) 416).

(14) As to the meaning of “shares” where a power authorises an appointment “in such shares as my cousin shall in his discretion think fit or proper,” see *Re Hughes* [1921] 2 Ch. 208.

(15) “Share” may be used in the sense of connoting the specific property bequeathed to the person spoken of, and not as part of something to be divided: see *Re Purves* 35 Sc. L.R. 852.

(16) “All share”: see *Fleming v. M’Culloch* 29 Sc. L.R. 645, cited ALL.

(17) The words “my shares in different securities” in a will were held not to include the testator’s interest as one of the next-of-kin of a deceased intestate, of shares and stock forming part of the unadministered estate of the intestate: see *Re Holmes* [1917] 1 Ir. R. 165.

(18) “All my stocks and shares” meant all forms of investments commonly dealt in on stock exchanges, in *Re Purnchard’s Will Trusts* [1948] Ch. 312.

(19) Power to invest in “stock or shares of any public company” includes power to invest in preference or ordinary stock (*Re Boys’ Will Trusts* [1905] 1 All E.R. 624). See PARTICIPATE.

(20) “Share” in a company: see *per* Farwell J., *Borland’s Trustee v. Steel* [1901] 1 Ch. 279.

(21) A share in a company regulated by the Companies Acts is a chose in action (*Re V. G. M. Holdings* [1942] Ch. 235).

(22) Under a bequest of “shares” in a company, the company’s ordinary stock, as well as shares, will pass (*Trinder v. Trinder* L.R. 1 Eq. 695; *Morrice v. Aylmer* 10 Ch. 148; L.R. 7 H.L. 717; see further *Re Knaggs* 49 S.J. 314; cp. *Re Herring* [1908] 2 Ch. 493, cited DEBENTURE STOCK; *Re Holmes* sup.), but not debenture stock (*Re Bodman* [1891] 3 Ch. 135), unless there is nothing else to satisfy “shares” (*Re Weeding* [1896] 2 Ch. 364; see further DEBENTURE). A bequest of “two ordinary

shares" in the Great Northern Railway of Ireland was held to mean £200 of its stock, the company never having had shares but stock only, and proof being furnished that £100 stock was often referred to as one share (*Brannigan v. Murphy* [1896] 1 I.R. 418); cp. *Re Henderson* 37 Sc. L.R. 976, cited *Strock*.

(23) "Share" in the Companies Act 1929 (c. 23), included "stock" except where there was an express or implied distinction between the two. There was no such distinction in s.70, authorising the issue of share warrants to bearer (*Pilkington v. United Railways of the Havana and Regla Warehouses Ltd.* [1930] 2 Ch. 108). See Companies Act 1948 (c. 38), ss.83, 455.

(24) "Guaranteed shares": see *Barr v. Ardrossan Castle C.C.* 38 Sc. L.R. 658, cited *GUARANTEED*.

(25) A bequest by a shareholder of all and every his "shares and interest" in an insurance company, "and all the advantages to be derived therefrom," did not pass a policy on his own life effected with the company, even though he was obliged to effect it and part of its bonuses had to be added to the capital of the company (*Harrington v. Moffat* 22 L.J. Ch. 775).

(26) Parol evidence to explain "shares" in a company was rejected in *Millard v. Bailey* L.R. 1 Eq. 378; but see *Jacques v. Chambers* 2 Coll. 435, and *O'Donnell v. Walsh* [1903] 1 Ir. R. 115, both cited *SELECT*.

(27) A bequest of a "share, right, and interest" in the *GOODWILL* of a partnership, and in its real and personal estate, does not pass a debt due to the testator from the partnership (*Re Beard, Simpson v. Beard* 57 L.J. Ch. 887; distinguished *Re Barfield* 84 L.T. 28).

(28) A "share" in a company "does not denote rights only, it denotes obligations also; and when a member transfers his share he transfers all his rights and obligations as a shareholder as from the date of the transfer. He does not transfer rights to dividends or bonuses already declared, nor does he transfer liabilities in respect of calls already made; but he transfers his rights to future payments and his liabilities to future calls" (*per* Lindley L.J., *Re National Bank of Wales* 66 L.J. Ch. 225, 226); therefore, a transfer with the sanction of the liquidator under s.131, Companies Act 1862 (c.89) (see Companies Act 1948 (c. 38), s.282), makes the transferee a "present" member, and the transferor a "past" member of a liquidating company within s.38 (see s.212 of 1948 Act) (*ibid.* [1897] 1 Ch. 298).

(29) An agreement for transfer of "shares" in a company about to be formed means in the absence of a contrary stipulation that the company's shares must in all respects be equal (*McIlquham v. Taylor* [1895] 1 Ch. 53).

(30) *Semble*, it is doubtful whether, on an agreement to purchase shares in a company, there is an implied condition that the company shall be in existence at the stipulated time for delivery: see *Nicholl v. Carey* 11 T.L.R. 526.

(31) Allotment letters may, if there be no shares, be regarded as a good execution of an order to buy "shares" in a specified company (*Mitchell v. Newhall* 15 L.J. Ex. 292).

(32) "Stock or shares of or in any public company" (s.14, Judgments Act 1838 (1 & 2 Vict., c. 110)) did not include debentures (*Sellar v. Bright* [1904] 2 K.B. 446).

(33) Debenture holders had no "share or interest in the capital or profits or income of the company" within the meaning of s.255(2) of the Income Tax Act 1952 (c. 10) (*I.R.C. v. Woolf (R.) & Co. (Rubber)* [1962] Ch. 35).

(34) Upon the word "shares," "in s.161, Companies Act 1862 (25 & 26 Vict., c. 89), it was decided (*Re City & County Investment Co.* 13 Ch. D. 475, and subsequent cases) that a sale may be made for partly-paid shares" (*per* Buckley J., *Mason v. Motor Traction Co.* [1905] 1 Ch. 426, in which case a similar ruling was

applied to "shares" in a memorandum of association). See Companies Act 1948 (11 & 12 Geo. 6, c. 38), s.287.

(35) "Share or interest" in a contract (s.12(1)(c), Municipal Corporations Act 1882 (c. 50)): see *Cox v. Truscott* 21 T.L.R. 319, cited *CONCERNED IN*; see also *Lapish v. Braithwaite* [1926] A.C. 275.

(36) Share capital of a company: see *Channel Collieries Trust Ltd. v. Dover, etc. Light Railway Co.* [1914] 2 Ch. 506; see also Gas Undertakings Act 1929 (c. 24).

(37) A gift of "£6000 of share capital" was held to be a gift of £6000 invested in a business which was not a limited company (*Wishart v. Murray's Executrix* [1949] C.L.Y. 5282).

(38) Share and loan capital: see *Yorkshire Electric Power Co. v. Central Electricity Board* [1943] 2 All E.R. 651.

(39) The purchaser of a "share" in a partnership did not, merely in virtue of such share, become entitled to be a partner, "or to interfere in the management or administration of the partnership business or affairs" (s.31(1), Partnership Act 1890 (c. 39), on which see *Re Garwood* [1903] 1 Ch. 236); yet the vendor of the share was entitled to be indemnified by the purchaser against the liabilities of the business, and to have a clause of such indemnification inserted in the assignment of the share (*Dobson v. Downey* [1901] 2 Ch. 620).

(40) "Share of profits" (s.2(3)(d), Partnership Act 1890 (c. 39)): see *Re Young* [1896] 2 Q.B. 484.

(41) To "share" a room in a dwelling-house it is not necessary to share in the same sense or on an equal basis (*Baker v. Turner* [1950] A.C. 401). See also *Rogers v. Hyde* [1951] 2 K.B. 923; *Hayward v. Marshall* [1952] 2 Q.B. 89.

(42) A sharing of accommodation whereby a house was not "Let as a separate dwelling" (Rent and Mortgage Interest (Restrictions) Act 1920 (c. 17), s.12(2)) had to involve the right of simultaneous use of a living room in such a manner that the privacy of the landlord or tenant was invaded (*per* Viscount Simonds in *Goodrich v. Paisner* [1957] A.C. 65).

Stat. Def., Companies Act 1948 (c. 38), s.455; Finance Act 1965 (c. 25), s.45(8); Income and Corporation Taxes Act 1970 (c. 10), ss.167, 186(10)(d), 237(3), 283(8), 461(E)(3); Finance Act 1974 (c. 30), s.44; Finance Act 1976 (c. 40), s.46, Sched. 12, para. 1; Finance Act 1978 (c. 42), s.61, Sched. 8, para. 3(1); Capital Gains Tax Act 1979 (c. 14), ss.64, 84; Companies Act 1980 (c. 22), s.73; Finance Act 1980 (c. 48), s.37(12); Finance Act 1982 (c. 39), s.54, Sched. 9, para. 16; Capital Transfer Tax Act 1980 (c. 51), s.140.

SHARE AND SHARE ALIKE. (1) The phrase "'share and share alike' has the same meaning as 'equally to be divided'" (Sug. Pow. (8th ed.) 656, citing *Phillips v. Garth* 3 Bro. C.C. 64; *Elmsley v. Young* 2 My. & K. 780; *per* Lord Moncreiff in *Re Stirling* 36 Sc. L.R. 200), and the beneficiaries take as tenants in common (*Rudge v. Barker* Ca. t. Talb. 124; *Heathe v. Heathe* 2 Atk. 122; *Perry v. Woods* 3 Ves. 204 a; *Ashford v. Haines* 21 L.J. Ch. 496; 3 Jarm. (8th ed.) 1794). See **ALIKE**; **EQUALLY**; **LAPSE**.

(2) Accordingly, this phrase, as a context, will control such words as "legal representatives" to mean next of kin (*King v. Cleaveland* 28 L.J. Ch. 835, cited **LEGAL REPRESENTATIVES**).

(3) But this phrase may, like "equally," be controlled by a strong context to create a joint tenancy (*Armstrong v. Eldridge* 3 Bro. C.C. 215, 216; *Re Barbour* [1967] Qd. R. 10).

(4) There may be a tenancy in common as regards the persons designated, but a joint tenancy as between substitutionary issue; thus, a gift to “sons and daughters who shall be then living and the issue of any then dead (such issue standing *in loco parentis*), share and share alike,” was held by North J., to be a tenancy in common as between the sons and daughters and issue, but that the issue, as between themselves and as regards the share they took, were joint tenants, there being no words of severance as between them (*Re Yates* [1891] 3 Ch. 53).

See RELATIONS.

SHARE-BROKER. A person who occasionally sold shares for friends was held not a “share-broker” within the late bankruptcy definition of “trader” (*Re Cleland* 2 Ch. 466, cited GOODS OR COMMODITIES).

See BROKER; cp. JOBBER.

SHAREHOLDER. (1) “Shareholder,” in Joint Stock Companies Act 1844 (c. 110): see *Bailey v. Universal Provident Association* 26 L.J.C.P. 87; *Wilkinson v. Anglo-Californian Co.* 18 Q.B. 728.

(2) In Companies Clauses Consolidation Acts 1845, “shareholder” meant “share-holder, proprietor, or member of the company; and, in referring to any such shareholder, expressions properly applicable to a person shall be held to apply to a corporation” (c. 16), s.3 (c. 17), s.3. See thereon and for a comparison between “shareholder” and “subscriber,” *Galvanized Iron Co. v. Westoby* 8 Ex. 17; *Waterford Railway v. Pidcock* 8 Ex. 279.

(3) In Companies Act 1862 (c. 89), “shareholder” “only meant the person who held the shares by having his name on the register” (*per Chitty J., Re Wala Wynaad Mining Co.* 21 Ch. D. 849). See further *Portal v. Emmens* 1 C.P.D. 664; *Kippling v. Todd* 3 C.P.D. 350; *Burke v. Lechmere* L.R. 6 Q.B. 297.

(4) As regards a requirement that a PROXY must be a “shareholder,” a person is a “shareholder” if he is so when the proxy is lodged and continues so when he acts upon it, although he was not so when the proxy was signed (*Bombay-Burmah Trading Co. v. Shroff* [1905] A.C. 213). See Companies Act 1948 (c. 38), Sched. I.

(5) “The shareholders” (s.40(1), Companies (Consolidation) Act 1908 (c. 69)), amongst whom a return of capital might be distributed from accumulated profits, did not necessarily mean all the shareholders; the distribution might be amongst a selected class of shareholders: see *Neale v. Birmingham Tramways Co.* [1910] 2 Ch. 464. Cp. Companies Act 1948 (sup.), s.61.

(6) The executors of a deceased shareholder are (in the absence of regulations to the contrary) entitled to be registered as shareholders simpliciter and in any order they choose: see *Re Saunders & Co.* [1908] 1 Ch. 415.

See HOLDING; IN HIS OWN RIGHT; MAJORITY; cp. STOCKHOLDER.

SHARES. See SHARE; STOCK; STOCKS.

SHARP. To charge a man with “sharp practice” is only an expression of opinion and is not defamatory, if based on a state of facts truly set forth (*per Lord M'Laren, Archer v. Ritchie* 28 Sc. L.R. 547, cited CROOKED, approved in *Bruce v. Ross* 39 Sc. L.R. 130, cited CRUEL; but see *Kincairney L.O., M'Kechie v. Blackwood* 40 Sc. L.R. 23, cited DELICACY).

SHAWE. See GRAVA.

SHED. Arson of “hovel, shed, or fold” (s.1, Burning of Farm Buildings Act 1844 (c. 62); a “shed,” there, connoted its popular meaning of a temporary building for stowing away things (*R. v. Amos* 20 L.J.M.C. 103).

SHEEP. See **CATTLE**. It was at one time held that an indictment for stealing a “sheep” was not supported by proof of stealing a lamb (*R. v. Loom Moody*, 160); but that was overruled by *R. v. Spicer* (1 Den. 82).

SHEEPHEAVES. “Small plots of pasture often in the middle of a waste . . . the soil of which may or may not be in the lord, but the pasture is certainly a private property, and is leased and sold as such” (Cooke, Inclosure Acts 44).

SHEEPWALK. A conveyance of farms and lands “together with the sheepwalks thereto belonging,” described in a schedule and delineated for the purpose of identification on a plan, only passed grazing rights and did not operate to confer a fee simple estate in the land described (*Wynn v. Jones (Antony) and Manor House Estate* (1958) 172 E.G. 859). See **FOLDCOURSE**. See further *Huddleston v. Woodroffe* 2 Rolls 61.

SHEER. Stat. Def., (Art. V, Merchant Shipping (Conventions) Act 1914 (c. 50).

SHEET OF LETTERPRESS. As to this phrase in definition of “book” (Copyright Act 1842 (5 & 6 Vict., c. 45)), see *Hildesheimer v. Dunn* 64 I .T. 452; *Hollinrake v. Truswell* [1894] 3 Ch. 420; *Clementi v. Golding* 11 East, 244; *Hime v. Dale* 2 Camp. 27 n.; *White v. Geroch* 2 B. & Ald. 298; see further *Davis v. Benjamin* [1906] 2 Ch. 491.

SHEET OF MUSIC. See **COPY**.

SHEFFIELD. “Sheffield marks” on cutlery: see Trade Marks Act 1938 (c. 22), s.38 and 2nd Sched.

SHELL FISH. *Semble*, that the right in the public to take shell fish on the sea shore does not include a right to take away shells which are thrown upon the sea shore (*Bagott v. Orr* 2 B. & P. 472).

Stat. Def., Sea Fisheries Regulation Act 1966 (c. 38), s.20; Sea Fisheries (Shell-fish) Act 1967 (c. 83), s.22; Sea Fish (Conservation) Act 1967 (c. 84), s.22; Import of Live Fish (England and Wales) Act 1980 (c. 27), s.4; Fisheries Act 1981 (c. 29), s.44; Diseases of Fish Act 1983 (c. 30), s.7.

See **SEA FISH**; **FISH**.

SHELTER. For the meaning of the word “shelter” in the phrase “shelters not more than 12 feet high for the accommodation and convenience of the public,” used in a deed conveying land to a corporation, see *Stourcliff Estates Co. Ltd. v. Bournemouth Corporation* [1910] 2 Ch. 12.

SHERIFF. See hereon Co. Litt. 109 b, 168 a; 1 Bl. Com. 339, 4 *ibid.* 292; Jacob.

“Sheriff” (Bankruptcy Act 1883 (c. 52), s.168) included “any officer charged with the execution of a writ or other process,” *i.e.* the officer analogous to the sheriff; and therefore when the serjeant-at-mace, having a levy warrant to execute from the lord mayor’s court, found an officer in possession under a *fieri facias*, and

(according to custom) entrusted that officer with the warrant to realise the amount leviable thereunder, the serjeant-at-mace was the officer to be served with notice under s.46(2), Bankruptcy Act 1883, sup. (*Ex p. Warren, Re Holland* 15 Q.B.D. 48). That latter section was replaced by s.11, Bankruptcy Act 1890 (c. 71), under subs. 2 of which neither the bailiff who levied nor the man in possession was the “sheriff” within the above definition, for neither was “charged with the execution” of the *feri facias* (*Bellyse v. M’Ginn* [1891] 2 Q.B. 227). See Bankruptcy Act of 1914 (c. 59), s.167.

SHIFTING CLAUSE. See hereon Butler’s note to Co. Litt. 327 a; Vaizey, 1262; *Fleeming v. Howden* L.R. 1 Sc. & D. App. 372; *Buckhurst Peerage* 2 App. Ca. 1: such a clause is to be construed, “if not strictly, at all events not so as to carry it beyond the purpose for which it was designed” (*per* Turner L.J., *Langdale v. Briggs* 26 L.J. Ch. 27; see further *Hearle v. Hicks* 8 Bing. 475; *Leslie v. Rothés* [1894] 2 Ch. 499). Cp. FORFEITURE.

SHIFTING LIEN. See IN OR UPON; see also LIEN.

SHIFTING USE. See SPRINGING.

SHIP. (1) “Ship,” technically taken, designates a particular species of sea-going vessel, square-rigged throughout, which carries three masts with tops and yards to each of them. It has also a generic sense, as designating a vessel of burden, irrespective of rig, and without regard to the particular means of locomotion (1 Arn. (5th ed.) 18, 19. See further *Hill v. Patten* 8 East, 375; *Forbes v. Aspinall* 13 East, 323).

(2) Under Merchant Shipping Acts, “‘ship’ shall include every description of vessel used in navigation, not propelled by oars” (s.2, Merchant Shipping Act 1854 (c. 104)—see now s.742, Merchant Shipping Act 1894 (c. 60)). In *Re Ferguson* (L.R. 6 Q.B. 291), Blackburn J. (pointing out that “include” in that definition did not connote an exclusive application), said: “Whether a ship is propelled with oars or not, she is still a ship. Most small vessels use something of the kind to propel them. The vessels which came over in the Armada, with perhaps a thousand men on board, were rowed by hundreds of slaves. Yet no one could say they were not ships. I can only suggest that ‘every vessel that substantially goes to SEA is a ship.’ I do not mean to say that every little boat that goes a mile or two outside a harbour is a ship, but that where it is really and substantially the business of a vessel to go to SEA, it is a ship. If the absence of oars were the test of a ship, this would take in the case of river steamers which never go to sea. Whenever the vessel is substantially a SEA-GOING vessel, whether it be decked or not, it would be a ship,” within the meaning of the Merchant Shipping Act. Accordingly, in that case it was held that a coble of 10 tons burthen, 24 feet in length, decked forward only, with two moveable masts and a sail for each, and which coble was accustomed to go 20 miles out to sea, and was usually under sail, but was sometimes propelled by oars, was a “ship.” But a vessel to be a “ship” within the definition, need not necessarily have been to sea. A launched unfinished vessel intended for navigation is a “ship” (*The Andalusian* 2 P.D. 231; 3 *ibid.* 182); so is a coble (*Re Ferguson* sup.; *Ex p. Hutchinson* [1871] W.N. 30); so, a sprit-sail barge on the Thames is a “ship” (*Corbett v. Pearce* [1904] 2 K.B. 422, cited SEAMAN; see also *Weeks v. Ross* [1913] 2 K.B. 229); so, a mud-hopper used for dredging purposes, not fitted with oars or other means of propulsion, and generally moved by towing, is a “ship” (*The Mac* 7 P.D. 126, followed in

The Mudlark [1911] P. 116; see also *The Harlow* [1922] P. 175); so are lighters used for navigation in the transport of goods on the Thames in tow of tugs. But a small electric steam launch, drawing 3 feet and used for pleasure on the artificial fore-shore sea-water lake at Southport, is not such a "ship" because it is not "used in navigation" (*Southport v. Morris* [1893] 1 Q.B. 359). So, a stationary beacon, e.g. a gas float, is not a "ship or boat" within s.458, Merchant Shipping Act 1854 (c. 104), replaced by s.546, Merchant Shipping Act 1894 (c. 60) (*The Gas Float Whitton* [1896] P. 42, cited WRECK; see SALVAGE).

(3) Partly built ships are condemnable in prize (*Schiffahrt-Treuhand G.m.b.H. v. H.M. Procurator-General* [1953] A.C. 232).

(4) "Ship" (s.419, Merchant Shipping Act 1894 (c. 60)): see *The Devonian* 70 L.J.P.D. & A. 74, cited Tow.

(5) The Merchant Shipping Act 1854 (c. 104), was, generally speaking, only applicable to British ships: see hereon *Union Bank of London v. Lenanton* 3 C.P.D. 243; SHIPS AND VESSELS; but see *Chalmers v. Scopenich* [1892] 1 Q.B. 735. "ANY ship" (s.111, Merchant Shipping Act 1894 (c. 60)) includes a foreign, as well as a British, ship (*R. v. Stewart* [1899] 1 Q.B. 964; following *Hart v. Alexander* 36 Sc. L.R. 64; see also *The Mecca* [1895] P. 95, inf., para. (17)). But the general rule is that Pt. II, Merchant Shipping Act 1894, sup. (which contains s.111, above mentioned), only applies to British ships; that is clearly so as regards ss.221–224, 236, for the offences of desertion and harbouring deserters from foreign ships are provided for, if at all, by s.238 (*Poll v. Dambe* [1901] 2 K.B. 579, citing *Leary v. Lloyd* 29 L.J.M.C. 194). See also Merchant Shipping Act 1921 (c. 28), s.1.

(6) "Ship," and also "vessel," in the County Courts Admiralty Jurisdiction Acts 1868 and 1869 (c. 71), (c. 51), had the same meaning as "ship" in the Merchant Shipping Act 1854 (c. 104), and did not give jurisdiction to try collisions between barges propelled by oars only (*Everard v. Kendall* L.R. 5 C.P. 428). See DAMAGE; DAMAGE BY COLLISION.

(7) The Bills of Sale Acts are not *in pari materiâ* with the Merchant Shipping Acts and the exemption from registration of an assignment of a "ship or vessel" under the former Acts (s.4, Bills of Sale Act 1878 (c. 31)), was not confined to such ships or vessels as required registration under the Merchant Shipping Acts (*Union Bank of London v. Lenanton* 3 C.P.D. 243; *Gapp v. Bond* 19 Q.B.D. 200); this last case showed that the exemption, as regards bills of sale, included a dumb barge propelled by oars.

(8) A ship may cease to be a ship, e.g. by being converted into a coal-hulk (*European & Australian Royal Mail Co. v. P. & O. Co.* 14 L.T. 704; see on this case, *The Gas Float Whitton* sup.). *Semble*, a ship temporarily sunk remains a "ship," as regards an insurance against "collision with any ship" (*Chandler v. Blogg* [1898] 1 Q.B. 32, cited COLLISION).

(9) "Ship," by itself, is probably equivalent to "ship and its appurtenances" (*per* Abbott C.J., *Gale v. Laurie* 5 B. & C. 156; *per* Wills J., *Re Salmon and Woods Ex p. Gould* 2 Morr. 137). Whether that is precisely so or not, a liability measured by the value of the "ship" in question (*Gale v. Laurie* sup.), or a mortgage of a "ship" (*Re Salmon and Woods* sup.; *Coltman v. Chamberlain* 25 Q.B.D. 328), includes everything without which it would not be prudent to send the ship to sea, e.g. fishing stores and gear, spare sails, duplicate anchors, steering apparatus, lights for lighting the vessel, etc.

(10) "Ship," as regards a marine insurance, included the outfit of a ship, e.g. coals, stores, and provisions (*Forbes v. Aspinall* 13 East. 325; *Brough v. Whimore* 4 R.T. 210; *The Glenlivet* [1893] P. 172). Cp. HULL; see FURNITURE.

(11) So, "ship," as regards a marine insurance, included the tug that is towing her (*M'Cowan v. Baine* [1891] A.C. 401, cited *Tow*).

(12) "Ship" will sometimes be read as "owners of the ship," e.g. damage to "ship" by collision includes damage which the owners have sustained by her detention as well as her injury (*Heard v. Holman* 34 L.J.C.P. 239).

(13) "Any ship" (ss.4, 5, 6, 7, and 10, Admiralty Court Act 1861 (c. 10)) meant any ship anywhere, whether British, colonial, or foreign (*The Mecca* [1895] P. 95).

(14) "Any ship or vessel": see *per* Lord Trayner, *Great Britain S.S. Association v. White* 29 Sc. L.R. 124, cited *POLICY*.

(15) A ship is a chattel within the meaning of ss.4 and 62, Sale of Goods Act 1893 (c. 71): see *Behnke v. Bede Shipping Co. Ltd.* [1927] 1 K.B. 649.

(16) "Ship belonging to His Majesty," under s.557, Merchant Shipping Act 1894 (c. 60), includes an enemy vessel seized in a British port at the beginning of war and subsequently requisitioned by the Admiralty and registered in their name and manned by an Admiralty crew. Such a ship cannot therefore claim salvage remuneration: see *The Matti* [1918] P. 314. Within s.1, Merchant Shipping (Salvage) Act 1916 (c. 41), includes a tug demised to the Admiralty and the latter are therefore entitled to payment for salvage services rendered by the vessel: see *Admiralty Commissioners v. Page* [1919] 1 K.B. 299, affirmed House of Lords together with *Admiralty Commissioners v. Elliott* sub. nom. *Elliott v. Admiralty Commissioners*; *Page v. The Same* [1921] 1 A.C. 138.

(17) "Ship making use of any port in the district": see *Humber Conservancy Board v. Federated Coal & Shipping Co.* 97 L.J.K.B. 136.

(18) "Ship or vessel." A flying-boat is not a "ship" or "vessel." These words connote a hollow structure intended to be used in navigation, that is, to do its real work on the seas or other waters, and capable of free and ordered movement thereon from one place to another (*Polpen Union Assurance Co. Ltd.* [1943] K.B. 161).

(19) A barge built for towing was held not to be a "ship" within the meaning of s.4(2) of the U.S. Carriage of Goods by Sea Act 1936, as incorporated into a bill of lading (*Wirth v. S.S. Acadia Forest and Lash Barge* [1974] 2 Lloyd's Rep. 563).

(20) "Ship specially equipped with salvage plant," under s.1, Merchant Shipping (Salvage) Act 1916 (c. 41), did not include a cable ship equipped with gear which was incidentally useful for salvage purposes: see *The Morgana* [1920] P. 442.

(21) "Agreement made in relation to the use or hire of any ship" (s.2(1) County Courts Admiralty Jurisdiction Amendment Act 1869 (c. 51)), included a charter-party (*The Alina* 5 Ex. D. 227), and also a bill of lading (*Pugsley v. Ropkins* [1892] 2 Q.B. 184). See *ADMIRALTY CAUSE*.

(22) "Ship lying at a wharf or quay" (Docks Regulations 1934 (No. 279), reg. 9). The fact that there was a dumb barge lying between the side of the ship and the quay did not prevent the ship being a "ship lying at a wharf or quay" (*Wilson (Walter) & Son v. Summerfield* [1956] 1 W.L.R. 1429).

"Arrived ship": see *ARRIVE*.

"Ship lost or not lost": see *LOST OR NOT LOST*.

"Ship stranded, sunk, or burnt": see *BURN; STRANDING*.

"Ship trading": see *TRADING*.

See *BRITISH SHIP; COASTING VESSEL; COLLISION; COMMAND; DISBURSEMENTS; EMIGRANT; FOREIGN; GABBERT; GOOD SHIP; HOME-TRADE SHIP; PASSENGER SHIP; SEA-GOING; SHIPS AND VESSELS; STEAMSHIP; UNSAFE; VESSEL*.

SHIP (To). Dues on timber "shipped or unshipped within the harbour or river": held, that to attach a tow-rope to a log of timber, or a number of logs loosely con-

nected, at one of the ends for the purpose of towing, is not to "ship" the timber; and that to cast off the tow-rope is not to "unship" it; query, whether a raft of logs so constructed as to be capable of being navigated can be said to be "unshipped" when, on reaching its destination, it is taken to pieces and landed (*Clyde Navigation v. Laird* 8 App. Ca. 658).

See SHIPPED; UNSHIPPING.

SHIP DAMAGE. In a charterparty between the East India Company and the owners of a ship taken into their service was the following clause, "but nevertheless the said part owners shall not be charged with any sum of money in respect of goods damaged on board the ship, either in her outward or homeward-bound voyage, but such as shall, by the condition and appearance of the package thereof, or by some other reasonable proof, appear to be ship damage"; part of the homeward-bound cargo was damaged in a storm; held, that this was not "ship damage," within the meaning of the clause, which is imputable only to such damage as happens by the insufficiency of the ship, or the neglect of those who have charge of her (*East India Co. v. Tod* 1 Brown P.C. 405).

SHIP MONEY. "Ship money" (s.2, Ship Money Act 1640 (c. 14)) was an imposition charged on the ports, towns, cities, boroughs, and counties of this realm to provide and furnish ships for the King's service (preamble, *ibid.*). In *R. v. Hampden* (3 State Trials, 825) it was decided "that when the good and safety of the kingdome in generall is concerned and the whole kingdome in danger, the King might by writ under the Great Seale of England command all the subjects of this his kingdome at their charge to provide and furnish such number of ships with men victuals and munition, and for such time as the King should thinke fit, for the defence and safeguard of the kingdome from such danger and perill, and that by law the King might compell the doing thereof in case of refusall or refractarinesse; and that the King is the sole judge both of the danger and when and how the same is to be prevented and avoided" (Preamble, Ship Money Act 1640 (c. 14)); for "the dominion of the sea, as it is an antient and undoubted right of the Crown of England, so it is the best security of the land; it is impregnable so long as the sea is well guarded. . . . The wooden walls are the best walls of this kingdom" (*per* Coventry L.K., *R. v. Hampden*, 3 State Trials, 837, 838). But that decision and the prior extrajudicial opinions "were and are contrary to and against the laws and statutes of this realm, the right of property, the libertie of the subjects, former resolutions in Parliament, and the Petition of Right made in the third yeare of the reign of his Majestie that now is" (s.2, *ibid.*).

SHIP PAPERS. Stat. Def., Naval Prize Act 1864 (c. 26), s.2.

See SHIPPING DOCUMENTS.

SHIPBUILDING YARD. By s.93 and Sched. 4, Pt. 2(24), Factory and Workshop Act 1878 (c. 16), "non-textile factories and workshops" included " 'shipbuilding yards,' i.e. any premises in which any ships, boats, or vessels, used in navigation, are made, finished, or repaired"; "the legislature contemplated by that expression premises in which something like the business of building or repairing ships was being carried on, and not that the repair of a single ship could constitute the whole premises where it is being carried on a 'shipbuilding yard' " (*per* Romer L.J., *Spencer v. Livett* 69 L.J.Q.B. 341).

SHIPMENT. (1) See *Caffin v. Aldridge* [1895] 2 Q.B. 366, 648, cited CARGO.

(2) "Shipment by steamer or steamers," "means that if a considerable portion of the goods under the contract in question are shipped by steamer within the time, that is to be a shipment which will satisfy the contract, and one which the purchaser cannot reject because another portion is not shipped in time" (*per Mellish L.J.*, *Brandt v. Lawrence* 1 Q.B.D. 344). See further *Reuter v. Sala* 4 C.P.D. 239.

(3) Goods sold "for shipment" to a named place means a real shipment; therefore, where alkali was sold "for shipment to France," and the buyers directed their carrying vessel to touch at Treport but to carry on the cargo to London, that was merely going through the form of a shipment to France, and was a breach of the contract (*Berk v. Day* 13 T.L.R. 475).

(4) "Shipment during the season" to Cronstadt; held to mean "not the average or ordinary time at which the river Neva was closed by ice (if, indeed, it were possible to ascertain it), but the actual time at which, in that particular year, it was closed" (*Lessing v. Horsley* 7 T.L.R. 352).

(5) "Shipment" in a contract made in England between English parties means the loading of goods into a ship, and evidence cannot be given of a custom that shipment means putting on board a railway car: see *Mowbray, Robinson & Co. v. Rosser* 91 L.J.K.B. 524.

(6) "On shipment": see *Harrison v. Hamel & Horley Ltd.* [1922] 2 A.C. 36; *Ethel Radcliffe S.S. Co. v. Barnett Ltd.* 42 T.L.R. 385.

(7) The word "shipment," as used in a *force majeure* clause in a charterparty, means no more than the bringing of goods to the shipping port and the loading on board a ship prepared to carry them to the contractual destination (*Tsakiroglou & Co. v. Noble Thorl* [1960] 2 Q.B. 318).

(8) Where a shipment of goods had, for quota reasons, to be covered by two separate sets of documents there was only one "shipment" under the terms of a c.i.f. contract for sale (*Rosenthal & Sons v. Esmail* [1965] 1 W.L.R. 1117).

"Shipment," "for shipment"; see SHIPPED.

Stat. Def., Customs and Excise Act 1952 (c. 44), s.307(1); Customs and Excise Management Act 1979 (c. 2), s.1.

See STEAMSHIP.

SHIPOWNER. Stat. Def., Merchant Shipping Act 1979 (c. 38), Sched. 4, art. 1(2).

SHIPPED. (1) "To be shipped" means to be put on board (*Bowes v. Shand* or *Shand v. Bowes* 2 App. Ca. 455, distinguishing *Alexander v. Vanderzee* L.R. 7 C.P. 530; *Wancke v. Wingren* 58 L.J.Q.B. 519; see hereon Benj. (8th ed.) 393).

(2) "Shipped again as soon as practicable," in s.9, Port of London (Port Rates on Goods) Order 1910, meant shipped in the ordinary course of navigation and not as soon as practicable for the conveniences of the merchant's business: see *Anglo-American Oil Co. v. Port of London Authority* [1914] 1 K.B. 14.

(3) "Shipped for sale": see *Witham v. Vane* [1881] W.N. 79.

(4) "Shipped in apparent good order and condition": see *Brandt v. Liverpool, Brazil & River Plate Steam Navigation Co.* 93 L.J.K.B. 646; *Silver v. Ocean Steamship Co. Ltd.* [1930] 1 K.B. 416.

(5) "Shipped in good order and condition": see *The Tromp* [1921] P. 337.

(6) "Shipped in October" (in contract for sale of goods): see *Aaron & Co. v. Comptoir Wegimont* [1921] 3 K.B. 435.

(7) "Goods shipped": see *Ribble Navigation Co. v. Hargreaves* 25 L.J.C.P. 97.

(8) Freight on "gross weight shipped": see *London Transport Co. v. Trechmann* [1904] 1 K.B. 643, cited LUMP.

"Shipped on board": see RECEIVED.

"Shipped for exportation": see EXPORTATION.

Stat. Def., Customs and Excise Management Act 1979 (c. 2), s.1.

See ON BOARD; TO SHIP.

SHIPPER. The "shipper" of goods "means the man who puts the goods into the vessel, with the intention of taking them to their destination" (*per* Jervis C.J., *Ribble Navigation Co. v. Hargreaves* 25 L.J.C.P. 99).

Stat. Def., Merchant Shipping (Liner Conferences) Act 1982 (c. 37), Sched. chapter 1.

SHIPPER'S RISK. See SHIP'S EXPENSE.

SHIPPING "Shipping and unshipping of goods": see UNSHIPPING.

Stat. Def., Customs and Excise Management Act 1979 (c. 2), s.3.

SHIPPING DOCUMENTS. (1) See *Tamvaco v. Lucas* 30 L.J.Q.B. 234; 31 *ibid.* 296; *North of England Oil Cake Co. v. Archangel Insurance* L.R. 10 Q.B. 254.

(2) "All the shipping documents": see *Cederberg v. Borries* 2 T.L.R. 201, cited ALL.

SHIPPING PURPOSES. Stat. Def., Harbours and Passing Tolls, etc. Act 1861 (c. 47), s.2.

SHIPPING VALUE. In a marine insurance, "shipping value" "includes not only the cost but the premiums of insurance" (*per* Blackburn J., *Anderson v. Morice* L.R. 10 C.P. 614).

SHIPS AND VESSELS. The Order in Council of February 18, 1854, exempted from compulsory pilotage "ships and vessels trading to ports between Boulogne and the Baltic on their outward passages"; British ships and vessels are alone comprised in that exemption (*The Vesta* 7 P.D. 240).

See SHIP; VESSEL.

SHIP'S EXPENSE. "Goods to be transhipped and forwarded at ship's expense": see *Stuart v. British & African Steam Navigation Co.* 32 L.T. 257; SHIP'S RISK; OWNER'S RISK.

SHIP'S HUSBAND. A ship's husband—who is frequently but not necessarily a part owner—is an agent "to do what is necessary to enable the ship to prosecute her voyage and earn freight" (*Barker v. Highley* 32 L.J.C.P. 270), and generally to act for the owners "in regard to all the affairs of the ship in the home port" (Story on Agency, s.35). See hereon Carver (9th ed.), p. 23 *et seq.* As such, a ship's husband is not a seaman.

SHIP'S PROVISIONS. In a harbour Act exempting from dues "ship's provisions necessary for the voyage" bunker coal is not included: see *Fraserburgh Harbour Commissioners v. Will* 1916 S.C. 107.

SHIP'S RISK. A charterparty provided that the cargo should be taken from the shore to the ship "at the ship's risk"; in the course of transit of the cargo from the shore to the ship a portion of the cargo was lost, not by the negligence of the shipowner; the charterparty contained the usual clause excepting loss occasioned by "perils of the sea"; in an action against the shipowner to recover the value of the portion of the cargo lost; held, that the meaning of "at the ship's risk" was to place the goods during their transit from the shore to the ship in the same position as if they were on board; and that, as the cargo was lost by the perils of the sea, the loss came within that exception, and the action could not be maintained (*Nottebohm v. Richter* 18 Q.B.D. 63).

Cp. land risk, under SEA INSURANCE.

See SHIP'S EXPENSE; OWNER'S RISK; RISK.

SHIP'S TACKLE. See *Northmoor S.S. Co. v. Harland* [1903] 2 Ir. R. 657, cited TACKLE.

SHIPWRECK. See WRECK.

SHOCK. See NERVOUS.

SHOOT. To "shoot at" a person (ss.11 and 12, Offences Against the Person Act 1828 (c. 31) might be done by presenting a loaded gun barrel at him and discharging it by striking the percussion cap on it with some hard substance, *e.g.* a pocket knife (*R. v. Coates* 6 C. & P. 394).

Attempt to shoot: see ATTEMPT.

Cp. LOADED ARM.

SHOOTING. See FOWLING; HUNTING.

SHOP. (1) The word "shop" implies a place where a retail trade is carried on; a blacksmith's shop is rather a warehouse than a shop (*R. v. Chapman* 7 J.P. 132), so of a carpenter's shop (*per Alderson B., R. v. Sanders* 9 C. & P. 79).

(2) "In order to constitute a shop, there must be some structure of a more or less permanent character" (*per Mellor J., Hooper v. Kenshole* 2 Q.B.D. 127; see further PLACE); it must be "something more than a mere place for sale; it imports a place for storing also, where the commodities admit of storing" (*per Mellor J., Pope v. Whalley* 34 L.J.M.C. 80; see also *Llandaff Co. v. Lyndon* 30 L.J.M.C. 105; *Fearon v. Mitchell* L.R. 7 Q.B. 690; *McHole v. Davies* 1 Q.B.D. 59). These cases were on the phrase "own shop" as used in the exception to s.13, Markets and Fairs Clauses Act 1847 (c. 14), and they are here referred to thereon; but they seem of general application. A vessel moored in a canal is not a "shop" within the exception (*Wiltshire v. Baker* 31 L.J.M.C. 10, n.); but a wooden shed affixed to a house and supported on wooden posts is within it (*Ashworth v. Heyworth* L.R. 4 Q.B. 316; see also *Wiltshire v. Willett* 31 L.J.M.C. 8); a like exception as to a person's "own shop" within 1000 yards of Southwark Borough Market is contained in Southwark Market Act 1756 (c. 31), s.10, on which Neville J., said "a warehouse which is used to store goods for the purpose of immediate sale may very well be a shop": see *Haynes v. Ford* [1911] 2 Ch. 237. See further MARKET OVERT.

(3) If a photographer takes a private house on the ground floor of which he displays and sells photographs, albums, or such like things, he converts the house into

a shop, even though he make no structural alteration in the building (*Wilkinson v. Rogers* 2 D.G.J. & S. 62; see CONVERT).

(4) A stall at a one-day fair was held to lack the necessary degree of permanency required for it to be deemed a "shop" within the meaning of the Shops Act 1950 (c. 28) (*Jarmain v. Wetherell* (1977) 75 L.G.R. 537). A field on which a number of market stalls had been set up from which different proprietors carried on various businesses was not a "shop" (*Thanet D.C. v. Ninedrive* [1978] 1 All E.R. 703). But stalls at Sunday markets are "shops" for the purposes of the Shops Act 1950 (c. 28) (*Barking and Dagenham London Borough Council v. Essexplan* (1983) 81 L.G.R. 408).

(5) In the case of a single hereditament consisting of self-contained premises laid out with counters, the whole of those premises constitutes the "shop." Any particular part of those premises or any particular counter does not of itself constitute a "shop" (*Fine-Fare v. Brighton Corporation* [1959] 1 W.L.R. 223). An open site used for the sale of caravans was held to be a "shop" for the purposes of the Shops Act 1950 (c. 28) (*Warley Caravans v. Wakelin* (1968) 66 L.G.R. 534).

(6) A market stall, even if almost permanently stationed in one place, is not a "shop" for the purposes of ss.12 and 17 of the Pharmacy and Medicines Act 1941 (c. 42) or s.19(1) of the Shops Act 1912 (c. 3) (*Summers v. Roberts* [1944] K.B. 106; *Greenwood v. Whelan* [1967] 1 Q.B. 396).

(7) Milk supplied from an automatic machine placed outside the door of a shop and fed from a reserve within when the shop was closed was held to be sold from a "shop" within the meaning of s.4(1), Shops Act 1912 (c. 3); see *Willesden Urban Council v. Morgan* [1915] 1 K.B. 349. See now Shops Act 1950 (c. 28), s.1(1). But a stall where games of mixed chance and skill are played on payment of a fee for prizes of chocolates was not a shop within s.19(1), Shops Act 1912, sup.: see *Dennis v. Hutchinson* [1922] 1 K.B. 693. Neither was an hotel a shop within this section: see *Gordon Hotels Co. v. London County Council* [1916] 2 K.B. 27, cited SHOP ASSISTANT.

(8) Shop Hours Act 1892 (c. 62), s.9, "shop" "means retail and wholesale shops, markets, stalls, and warehouses, in which assistants are employed for HIRE; and includes licensed public-houses and refreshment houses of any kind." Within that definition, a newspaper stall might, for some purposes, be a "shop" (*Smith v. Kyle* 71 L.J.K.B. 16); and an hotel, even of such a superior character as the Savoy Hotel, London, was a "public house" (*Savoy Hotel Co. v. London County Council* [1900] 1 Q.B. 665; cp. *Coombs v. Cook* sup.). "In or about a shop" (s.3, *ibid.*) meant in or about a shop or its business; therefore, it was an offence against this section to employ a young person more than 74 hours a week, whether in a shop or about its business (*Collman v. Roberts* [1896] 1 Q.B. 457).

(9) "Shop" (Shops (Early Closing Days) Act 1965 (c. 25), s.1(2)(a)). Premises where goods for dry cleaning were received from and returned to customers, and where some dry cleaning was carried out, was held not to be a "shop" (*Boyd v. Bell*, 1970 S.C. 1).

(10) Shops (Sunday Trading Restriction) Act 1936 (c. 53), did not include a warehouse where ice-cream was kept, or a tricycle from which it was retailed (*Eldorado Ice-cream Co. v. Clarke* [1938] 1 K.B. 715). Cp. now Shops Act 1950 (c. 28), ss.22, 23. Premises used for hiring video films to members of the public were "shops" for the purposes of the Sunday trading provisions (*Lewis v. Rogers: Gardner v. Duffield*, [1984] Crim. L.R. 426).

(11) "Shop" (s.3, Malicious Damage Act 1861 (c. 97)) was not necessarily a completed building (*R. v. Manning* L.R. 1 C.C.R. 338, cited BUILDING).

(12) “A tavern would not come within the definition of ‘shop,’ ” in an exception from a covenant requiring a property generally to be used for private houses (*per* Huddleston B., *Coombs v. Cook Cab. & El.* 75; see further *Hall v. Box* 18 W.R. 820; cp. *Savoy Hotel Co. v. London County Council* [1900] 1 Q.B. 665, *supra*, para. (8)).

(13) In a covenant in a conveyance of land, prohibiting the erection of “any beer house or shop or any hotel of less annual value than” so much, “shop” is to be read as beer-shop (*Formby v. Barker* [1903] 2 Ch. 539). So, *semble*, “shop” in s.10(1), London Building Act 1905 (c. ccix), included a public-house: see *London County Council v. Cannon Brewery Co.* [1911] 1 K.B. 235, cited DWELLING-HOUSE.

(14) Conversely, although licensed premises “might, for some purposes, in strictness be called a ‘shop,’ because goods in the shape of beer, spirits, etc., are sold therein by retail, it is not, necessarily, a ‘shop’ within the House Tax Acts” (*per* Lord Brampton, *Grant v. Langston* 69 L.J.P.C. 73, also cited HOUSE).

(15) “Shop for the sale of any goods or commodities other than foreign wine” (s.3, Refreshment Houses Act 1860 (c. 27)), included the premises of a brewer who had a spirit dealer’s retail licence or (probably) who had a brewer’s licence to sell beer wholesale (*R. v. Bishop* 50 J.P. 167).

(16) (Leasehold Property (Temporary Provisions) Act 1951 (c. 38)), s.20(1)). Premises were not a “shop” if the business carried on was not “wholly or mainly for the purposes of a retail trade or business”; a business in which only a small percentage was retail business was not a shop within the section (*Berthelemy v. Neale* [1952] 1 T.L.R. 458). Premises where a builder’s and decorator’s business was carried on were not a “shop” (*M. and F. Frawley v. Ve-Ri-Best Manufacturing Co.* [1953] 1 Q.B. 318). See also *Warwick v. Spencer* 1 C.L.C. 5504 (clothing cleaners and dyers not a shop); *Deeble v. Robinson* [1954] 1 Q.B. 77 (a milk roundsman’s shed used for storing bottles, a refrigerator, etc., not a shop). See RETAIL.

(17) “Shop” (Town and Country Planning (Use Classes) Order 1948 (No. 954)), did not include licensed premises where light refreshments were served (*Central Land Board v. Saxone Shoe Co.* [1956] 1 Q.B. 288). Nor was a basement used as a workshop, or for storing, sorting, dispatching and repairing goods used in the occupier’s shop opposite the basement a shop within art. 2(2) of Town and Country Planning (Use Classes) Order 1950 (No. 1131) (*Horwitz v. Rowson* [1960] 1 W.L.R. 803). A hut, used as an office, on land where wooden portable garden sheds and garages were displayed and sold was a “shop” within the meaning of this article (*Marshall v. Nottingham Corporation* [1960] 1 W.L.R. 707).

“Shop premises.” Stat. Def., Offices, Shops and Railway Premises Act 1963 (c. 41), s.1(3).

“Open shop”: see KEEP OPEN.

See OFFICE; BEER-HOUSE; RETAIL.

SHOP ASSISTANT. (1) Under s.19, Shops Act 1912 (c. 3), a kitchen maid employed in the kitchen of a restaurant who had no duties to perform in the room where customers were served was held to be employed in a shop in connection with the serving of customers within the meaning of the section, and consequently entitled to a statutory weekly half-holiday: see *Melhuish v. London County Council* [1914] 4 K.B. 325; *Prance v. London County Council* [1915] 1 K.B. 688; and *Gordon Hotels Ltd. v. London County Council* [1916] 2 K.B. 27, where these two cases were applied. See now Shops Act 1950 (c. 28), s.74(1).

(2) “Shop assistant” (s.1(5), Shops Act 1913 (c. 24)): see *Rutherford v. Trust Houses Ltd.* [1926] 1 K.B. 321.

SHOP FRONT. A condition in a letting agreement related to a “shop front”; held, that that phrase was not explainable by another document relating to the same premises (*Doe d. Nash v. Birch* 5 L.J. Ex. 185).

SHOPKEEPER. See **MERCHANT**.

SHORE. (1) The shore of the sea “is that ground that is between the ordinary high-water and low-water mark. This doth, prima facie and of common right, belong to the King, both in the shore of the sea and in the shore of the arms of the sea” (Hale, *De Jure Maris*, ch. 4). See further Callis, 54. **BANK**; **CREEK**; **MARETTUM**.

(2) “The rule of the civil law was, *Est autem littus maris quatenus hybernus fluctus maximus excurrit*. This is certainly not the doctrine of our law. All the authorities concur in the conclusion that the right (of the Crown to the seashore) is confined to what is covered by ‘ordinary’ tides. By *hybernus fluctus maximus* is clearly meant extraordinary high tides, though, speaking with physical accuracy, the winter tide is not, in general, the highest. Land covered only by these extraordinary tides is not what is meant by the sea shore” (*per* Cranworth C., *A.-G. v. Chambers* 23 L.J. Ch. 666). The phrase “ordinary tides,” in this connection, does not include the spring tides at the equinox, although happening in the usual order of nature; it means those tides which are of common occurrence (*per* Alderson B., and Maule J., *ibid.*).

(3) “Ordinary tides, or nepe tides” are those “which happen between the full and change of the moon; and this is that which is properly *littus maris*, sometimes called maretum, sometimes warettum” (Hale, *De Jure Maris*, ch. 6), and the precise meaning of that rule is that the *medium filum* of all tides throughout the year—including the spring tides and the ordinary equinoctial tides—gives the limit, in the absence of usage, to what is the sea shore (*A.-G. v. Chambers* *sup.*; *Lowe v. Govett* 1 L.J.K.B. 224). See further Hall on the Sea Shore, 8 *et seq.*

(4) “‘Shore’ denotes that specific portion of the soil by which the sea is confined to certain limits. That term is wholly inapplicable to the grant of a privilege or easement; it, of necessity, comprehends the soil itself. . . . The Crown, by the grant of the ‘sea shore,’ would convey not that which at the time of the grant is between the high and low water marks, but that which from time to time shall be between these two termini. Where the grantee has a freehold in that which the Crown grants, his freehold shifts as the sea recedes or encroaches” (*per* Bayley J., *Scrutton v. Brown* 4 B. & C. 496, 498). The ruling in *Scrutton v. Brown* applies to a conveyance between subject and subject (*Mellor v. Walmesley* [1905] 2 Ch. 164, cited **SEA SHORE**). See **IMPERCEPTIBLE**; **INCREASE**.

(5) In the absence of evidence to the contrary, the shore is extra-parochial (*R. v. Musson* 27 L.J.M.C. 100). Modern usage is admissible to show that it is parcel of an adjoining manor (*Beaufort v. Swansea* 3 Ex. 413).

“Shore RISK”: see **INTERIOR**.

See **BED**; **KELP-SHORE**; **ON SHORE**; **ON THE SHORE**; **STRAND**.

SHORT CUT. See *Brotherton v. Jackson* 98 L.J.K.B. 76.

SHORT INTEREST. In a marine insurance, “‘short interest’ means no more than a short profit on the cargo to the extent of the whole sum insured” (*per* Ellenborough C.J., *Eyre v. Glover* 16 East, 220).

SHORT LEASE. Stat. Def., Companies Act 1981 (c. 62), Sched. 1, para. 82.

SHOT GUN. Stat. Def., Firearms Act 1968 (c. 27), s.1(3)(a).

See FIREARM.

SHOULD. “What rent should be payable” (Agricultural Holdings Act 1948 (c. 63), s.8), “should be” is not to be construed “should have been” (*Sclater v. Horton* [1954] 2 Q.B. 1).

SHOW. “Show his ticket”: see DELIVER; PUBLIC SHOW.

SHOW A LIGHT. To “show from her stern . . . a white, or flare-up, light,” by a ship which is being overtaken, Art. 10, Regulations for Preventing Collisions at Sea 1897, connotes that the flashing of a light (a thing done on a sudden) is sufficient; but a fixed light may also be sufficient (*per* Hannen P., *The Stakesby* 15 P.D. 166; but see thereon *The Breadalbane* 7 P.D. 186; *The Pacific* 9 P.D. 124; and *The Imbro* 14 P.D. 73; see now Art. 10, Regulations for Preventing Collisions at Sea 1910 (No. 1113). If a flash light is used, “one short exhibition is not sufficient for the safety of the vessels; the light should be shown from time to time so long as the vessel in which it is shown continues to be an overtaken one” (*per* Hannen P., *The Essquibo* 13 P.D. 53). “Where a fixed light is permissible, care must be taken that it shall not be visible over the space where the side lights can be seen” (Abbott (14th ed.), 931, citing *The Main* 11 P.D. 132, cited OVERTAKEN; *The Imbro* sup.; *The Palinurus* 13 P.D. 14).

SHOW CAUSE. Where a party has to “show cause,” that, by necessary implication, allows the other side to answer (*per* Brett L.J., *Davis v. Spence* 1 C.P.D. 721; *Girvin v. Grepe* 13 Ch. D. 174; but see this last case for cases to the contrary).

“Cause shown”: see CAUSE; SHOWN.

SHOWMAN. “Showmen’s goods vehicles” (Vehicles (Excise) Act 1971 (c. 10), Sched. 4) means vehicles used in the entertainment industry, and does not cover travelling commercial exhibitions or sales points (*R. v. Department of Transport, ex p. Lakeland Plastics (Windermere)* [1983] R.T.R. 82).

“Showman’s vehicle” (Goods Vehicles (Operators’ Licences) Regs. (1977 No. 1737), para. 23). Vehicles used by a company to deliver equipment for travelling showmen were not themselves “showman’s vehicles” for the purposes of this regulation; and the company itself was not, therefore, a “travelling showman” within the meaning of this paragraph (*Bowra v. Dann Catering Co.* [1982] R.T.R. 120). “Showman’s goods vehicle”; “showman’s vehicle.” Stat. Def., Finance Act 1982 (c. 39), Sched. 5, para. 15.

SHOWN. Prima facie evidence—that a child was “not shown” to be unfit to be vaccinated, etc. (Vaccination Act 1867 (c. 84))—was given by proving that there had been no notification of the vaccination (*Over v. Harwood* [1900] 1 Q.B. 803).

See SHOW CAUSE.

SI CONTINGAT. See IF.

SICA. “‘Sica, sicha,’ a ditch” (Jacob).

SICH. “Is a little current of water which is dry in summer; a water furrow or gutter” (Jacob).

SICK. (1) A bequest for "sick, aged, and impotent persons," held to indicate that hospital, not educational, purposes were intended (*A.-G. v. Northumberland* 5 T.L.R. 237, 719).

(2) Persons "not under 50 years of age" "aged" within the Charitable Gifts Act 1601 (c. 4) and the Mortmain and Charitable Uses Act 1888 (c. 42), (*Re Wall, Pomeroy v. Willway* 42 Ch. D. 510). See also *Thompson v. Corby* 27 Bea. 649; *Re Dudgeon* 74 L.T. 613; *Browne v. King* 17 L.R. Ir. 454. See also *Re Lucas* [1922] 1 Ch. 52.

(3) A bequest for pensioning "old and worn-out clerks" of a firm is a good CHARITY; it comes within both of the words "aged" and "impotent" in these Acts (*Re Gosling* 16 T.L.R. 152). Cp. OLD OFFICERS.

SICKNESS. (1) "Sickness" means disease (per Campbell C.J., *R. v. Huddersfield* 26 L.J.M.C. 171); therefore, pregnancy was not, of itself, "sickness" within Poor Removal Act 1846 (c. 66), s.4 (*ibid.* 26 L.J.M.C. 169); but a woman might be "ill" from pregnancy.

(2) Incurable blindness is such a "sickness" (*R. v. Bucknell* 23 L.T.O.S. 142); but is lunacy such a "sickness"? See thereon *R. v. Manchester* 26 L.J.M.C. 1.

(3) Lunacy is "sickness" within the relief clause in the rules of a friendly society (*Burton v. Eyden* L.R. 8 Q.B. 295, where Archibald J., said, "There can be no doubt that insanity is a species of sickness"; see also *R. v. Swindon* 42 J.P. 407).

(4) Inability to work from mere old age is not "sickness" (*Dunkley v. Harrison* 51 J.P. 227).

(5) "Sickness, or other sufficient cause," enabling a county court judge to suspend or stay judgment, order, or execution (County Courts Act 1888 (c.43), s.153), connoted that the "other sufficient cause" had to be "an external cause which would, for instance, prevent the debtor from exercising his industry" (*per* Wills J., *Attenborough v. Henschell* [1895] 1 Q.B. 833); that case decided that there had to be something more than a mere inability to pay.

(6) As including disablement by accident, see *Maloney v. St. Helens Industrial Co-operative Society Ltd.* [1933] 1 K.B. 293.

"Permanent sickness": see PERMANENT.

See DISEASE; ILL; ILLNESS; CAUSED BY; UNSOUND MIND.

SIDE. (1) "No doubt, in a certain context, the word 'side' might be so used as to be shown, by that context, to be contra-distinguished from the top, or bottom, or end, of a subject of quadrilateral or any other figure. But for this purpose a determining context is necessary. In the absence of such a context, it is accurate, both in scientific and in ordinary language, to say that a quadrilateral table has four sides. In the (Communion) rubrics not only is there no context to exclude the application of that term to the shorter as well as the longer sides, but the effect of the context is just the reverse" (*per* Cairns C., delivering judgment of P.C., *Ridsdale v. Clifton* 2 P.D. 341; but see thereon *Read v. Lincoln (Bishop)* [1892] A.C. 663, 665, cited NORTH SIDE).

(2) "The side or sides of any carriage-way or cartway" (Highway Act 1864 (c. 101), s.51) meant any land forming part of the highway, though not part of the metalled road; but did not include land not part of the highway, though by the side of the road (*Easton v. Richmond* L.R. 7 Q.B. 69). A similar construction was given to "sides" of a turnpike road in Turnpike Roads Act 1828 (c. 77), s.5 (*Beckett v. Upton* 25 L.J.Q.B. 70).

(3) To speak of a thing being on the "side" of some other thing, "contemplates

some degree of proximity" (*per* Fry L.J., *Ravensthorpe v. Hinchcliffe* 24 Q.B.D. 168). "It is doubtful, to say no more, whether a building 300 or 400 yards distant from another building can be said to be on one side of it," within Public Health (Buildings in Streets) Act 1888 (c. 52), s.3, which prohibited the bringing forward of a building beyond the front main wall of the house or building "on either side" of it (*ibid.*); but a finding by justices that a house 64 feet from another house was on the "side" of that other, would not be interfered with (*Warren v. Mustard* 61 L.J.M.C. 18); yet, *semble*, a similar decision by a Local Board of Health would be reversed (*R. v. Ormesby* 43 W.R. 96). See also *A.-G. v. Edwards* [1891] 1 Ch. 194; *Anderson v. Richards* 4 L.G.R. 404.

(4) Building "erected on the side of a new street" (Metropolis Management Amendment Act 1862 (c. 102), s.85) included a building erected at a corner formed by the junction of an old and a new street, although its main entrance was in the old street (*London County Council v. Lawrence* [1893] 2 Q.B. 228). See also *IN*.

(5) "Sides of every . . . working place" (Coal Mines Act 1911 (c. 50), s.49, see now Mines and Quarries Act 1954 (c. 70), s.48(1)). A coal face is one of the "sides" of the working place within the meaning of these sections (*Gough v. National Coal Board* [1959] A.C. 698).

"This side" of: see *GIBALTAR*.

"Relations on my side": see *RELATIONS*.

SIDE-CAR. (1) In order to constitute a "side-car" within reg. 7(1)(d) of the Motor-Vehicles (Driving Licences) Regulations 1963 (No. 1026), an attachment must be capable of carrying and not be merely a bare chassis (*Cox v. Harrison* [1968] 1 W.L.R. 1907).

(2) A "side-car" such as is necessary to entitle a learner motorcycle driver to carry a passenger under reg. 6(1)(d) of the Motor Vehicles (Driving Licences) Regulations 1971 (No. 451), is not limited to an attachment for carrying a passenger, an attachment for carrying goods is adequate, and so long as there is such an attachment the regulation would be satisfied even if the passenger was on the pillion (*Keen v. Parker* [1976] 1 W.L.R. 74).

SIDELINGS. Are "meers betwixt or on the sides of ridges of arable land" (Jacob).

SIDEWAY. See *CAUSEWAY*.

SIDING. (1) "Siding, or branch railway, not belonging to the company" (Railway and Canal Traffic Act 1894 (c. 54), s.4); see *North Staffordshire Railway v. Salt Union* 10 Ry. & Can. Traffic Ca. 161; *Salt Union v. North Staffordshire Railway* *ibid.* 179; *Portway v. Colne Valley, etc. Railway* *ibid.* 211; *Pidcock v. Manchester, Sheffield & Lincolnshire Railway* 9 *ibid.* 45; *Huntington v. Lancashire & Yorkshire Railway* 11 Ry. & Can. Tr. Ca. 237; *Girardot v. Great Eastern Railway* *ibid.* 244.

(2) Siding "adjacent to and belonging to the mine" within the definition of "mine," in Coal Mines Regulations Act 1887 (c. 58), as applied to Workmen's Compensation Act 1897 (c. 37): see *Anderson v. Lochgelly Iron Co.* 42 Sc. L.R. 147; see also *ADJACENT*.

(3) A private siding is not part of the "railway" (*Cowan v. North British Railway* 38 Sc. L.R. 514, cited *FACILITIES*). See also Railways (Private Sidings) Act 1904 (c. 19), s.2.

(4) Siding accommodation, charge for: see *London & North Western Railway v. Crooke* 20 T.L.R. 506. See Railways Act 1921 (c. 55), Sched. 5. See also s.40.

(5) "Wait order siding": see *Midland Railway v. Myers* [1908] 2 K.B. 256, cited ACCOMMODATION.

Stat. Def., Railways Act 1921 (c. 55), Sched. 5.

SIGHT. (1) "Loss of sight in both eyes," in an accident insurance, means totally blind; therefore, where the insured was a one-eyed man when the insurance was effected, and the insurer by himself or his agent knew of that fact, and after the insurance the insured loses by accident the sight of his only eye, he is entitled to recover the amount payable under the policy as on the "loss of sight in both eyes" (*Bawden v. London, etc. Assurance* [1892] 2 Q.B. 534).

(2) "In sight of one another" (Regulations for Preventing Collisions at Sea 1897, Art. 28: see *The Bellanoch* [1907] A.C. 269; *The Corinthian* [1909] P. 260.

See AT SIGHT; PRESENCE.

SIGN. (1) "Door, shutter, trap, platform, shoot, sign, cat-head, crane, hoist, or other apparatus or thing in connection with any building," "so as to project over the surface of any street" (Liverpool Improvement Act 1882 (c. lv), s.36(5)): held, by the deputy stipendiary, to mean a sign of a fairly permanent and fixed character which, on the facts, he held the one in question was not; but he took too narrow a view, and the case was sent back for reconsideration (*Goldstraw v. Jones* 96 L.T. 30). Cp. PROJECTION.

(2) "Signs for regulating traffic" (Road Traffic Act 1930 (c. 43), s.49) were signs indicating turnings and "halt," "slow," or "keep left" signs (*Gibbons v. Skinner* [1951] 2 K.B. 379).

See SKY SIGN; SUBSCRIBE.

SIGN AND ALLOW. As to the effect of the "signing and allowing" of an assessment by Inland Revenue Commissioners pursuant to Income Tax Act 1952 (c. 10), ss.35, 41 see *B.P. Refinery (Kent) v. Kent River Board*; *Same v. Lower Medway Internal Drainage Board* [1957] 1 Q.B. 84.

SIGNED; SIGNATURE. (1) Speaking generally, a signature is the writing, or otherwise affixing, a person's name, or a mark to represent his name, by himself or by his authority (*R. v. Kent Justices* L.R. 8 Q.B. 305), with the intention of authenticating a document as being that of, or as binding on, the person whose name or mark is so written or affixed. In *Morton v. Copeland* (16 C.B. 535), Maule J., said, "Signature does not, necessarily, mean writing a person's Christian and surname, but any mark which identifies it as the act of the party," but the reporter adds in a note, "provided it be proved or admitted to be genuine, and be the accustomed mode of signature of the party." Without more, "to sign" is not the same as "to subscribe."

(2) The minute requisite of a signature will vary according to the nature of the documents to which it is affixed, e.g.—

- (a) Deeds;
- (b) Wills;
- (c) Contracts;
- (d) Bills of exchange and promissory notes;
- (e) Solicitors' bills;
- (f) Electioneering paper;
- (g) Judge's orders and legal proceedings;
- (h) Office copies;

and “in every case where a statute requires a particular document to be signed by a particular person, it must be a pure question on the construction of the statute whether the signature by an agent is sufficient” (*per* Bowen L.J., *Re Whitley* 32 Ch. D. 337).

(a) Deeds. (i) At common law “a deed may be good, albeit the party that doth seal it doth never set his name or his mark to it, so as it be duly sealed and delivered” (Touch. 60). Since the Statute of Frauds (29 Car. 2, c. 3), however, it has been a question whether a deed is within its provisions as being an “agreement” and therefore required to be signed. Blackstone thinks it is (2 Com. 306), and herein he is cited and followed by Hilliard in his edition of the Touchstone (n. 2, p. 56). Mr. Preston, on the contrary, thinks that a deed is not within the statute and does not require signing (Touch., n. 24, Preston’s ed.). In *Cooch v. Goodman* (2 Q.B. 580), the point was discussed but not decided; and in *Aveline v. Whisson* (12 L.J.C.P. 58), the point was conceded in the negative without argument. This view was strengthened in *Cherry v. Heming* (19 L.J. Ex. 63), where all the judges (Parke, Alderson, Rolfe, and Platt) gave it as their opinion (*obiter*) that a deed is not within the statute and does not require signing. Thus the weight of authority is against the necessity of signature to a deed; still, “it would certainly be most unwise to raise the question by leaving any deed sealed and delivered, but not signed” (Wms. R.P. 127). If it should ultimately be held that a deed generally must be signed, then, as also in all those particular cases where signature is expressly required, it would seem that the kind of signature may be the same as that required to wills.

(ii) “It is established, in my judgment, as a general proposition that at common law a person sufficiently “signs” a document if it is signed in his name and with his authority by somebody else, and in such a case the agent’s signature is treated as being that of his principal” (*per* Romer L.J. in *London County Council v. Vitamins Ltd.* [1955] 2 Q.B. 218).

(b) Wills. (i) Wills Act 1837 (c. 26), s.9, requires that all wills “shall be signed at the foot or end thereof by the testator or by some other person in his presence and by his direction.” Perhaps the most common error as regards the requisites of this signature is the tracing a former signature with a dry pen. This generally happens where there have been alterations made in a will since its execution and where accordingly a re-execution of the will is necessary, but “it cannot be too well understood that tracing with a dry pen is not equivalent to a signature” (*per* Cresswell J.O., *Re Cunningham* 29 L.J.P.M. & A. 71). It will be observed that a dry pen adds nothing to a document, makes no mark or sign upon it; hence its inutility. But when there is a mark or sign (or, *semble*, a seal, *per* Bayley B., *Doe d. Phillips v. Evans* 2 L.J. Ex. 193; but see *Re Byrd* *inf.*), made to a will, which mark or sign was intended by the testator to be, or to stand for, his name, then the court is not nice as to the kind of mark or sign which is employed. “Whether the mark is made by a pen, or some other instrument cannot make any difference”; and therefore a stamped impression of a testator’s signature is sufficient (*Jenkyns v. Gaisford* 32 L.J.P.M. & A. 122). The mark of the testator (and, it seems, whether he can or cannot write) is a sufficient signature even though his name is not placed against the mark (*Re Field* 3 Curt. 752; *Baker v. Dening* 8 A. & E. 94; and, particularly, *Re Bryce* 2 Curt. 325), or even where a wrong name is written against the mark; for in that case “the execution is perfect as soon as the mark is affixed,” and therefore, “it matters not what someone else may have written against the mark” (*per* Cresswell J.O., *Re Douse* 31 L.J.P.M. & A. 172; see also *Re Clarke* 27 *ibid.* 18). So, if a testator, or witness, writes a name, not his or her real name, but intended to represent that real

name, the signature will be good. Thus, where a woman whose name was "Glover" signed her name as "Reed" (that being the name of her deceased first husband) the signature was held good (*Re Glover* 11 Jur. 1022); and signature in an assumed name is good (*Re Redding* 14 Jur. 1052). But errors of this kind appear only to be good when done by mistake; and where attesting witness signed her husband's name instead of her own, it having been desired that the will should have the appearance of being attested by the husband, the signature was held invalid (*Pryor v. Pryor* 29 L.J.P.M. & A. 114; *Re Leverington* 11 P.D. 80). See also SUBSCRIBE; PRESENCE.

(ii) Signature by initials is good (*Re Wingrove* 15 Jur. 91; *Re Savory* *ibid.* 1042; *Re Hinds* 16 *ibid.* 1161). Affixing a seal, it has been said, is not a signing (*Re Byrd* 3 Curt. 117; see also 1 Jarm. (8th ed.) 127; but see *per* Bayley B., *Doe d. Phillips v. Evans* *sup.*). The hand of a testator may be guided if he is unable from illness to do without that aid (*Wilson v. Beddard* 12 Sim. 28). See also 1 Jarm. (8th ed.) 126 *et seq.*; Wms. Exs. (12th ed.) 40 *et seq.*; *ibid.* (13th ed.) 93; and as to what is an acknowledgment of a testator's signature to a will, see ACKNOWLEDGMENT. A testatrix wrote her initials and half her surname but was unable to complete because of the action of a drug which made her unconscious; this was a sufficient signature (*Re Chalcraft* [1948] P. 222).

(c) Contracts. (i) At common law a contract did not require any writing; but by the Statute of Frauds a great many contracts must be in writing and "signed by the party to be charged therewith, or some other person thereunto by him lawfully authorised," a provision which, in s.17 of the Statute, is replaced in similar terms by s.4, Sale of Goods Act 1893 (c. 71). Observe, first, who is to sign—"the party to be charged"; the signature of the person seeking to enforce the contract is not necessary (*Laythoarp v. Bryant* 2 Bing. N.C. 735); therefore, a written signed proposal with the necessary details to support a contract, accepted by word of mouth, may be enforced by the acceptor against the proposer, though an agreement based on the proposal could not be enforced against such an acceptor (*Warner v. Willington* 25 L.J. Ch. 662; *Smith v. Neale* 2 C.B.N.S. 67; *Liverpool Banking Co. v. Eccles* 28 L.J. Ex. 122; *Peek v. North Staffordshire Railway* 29 L.J.Q.B. 97). As to the character of the requisite signature to a contract: in the first place, all that has been said as to the signature of a will by a stamped impression, or a mark, or initials, or (it seems) a wrong name, is equally applicable to the signature of a contract under the Statute of Frauds (see cases collected Add. C. (11th ed.) 39; but "whether a signature by initials would suffice, seems not to have been decided expressly," Benj. (8th ed.) 263—see as to this *Hill v. Hill* [1947] Ch. 231). But in a contract, the latitude as to the manner of signing is carried much farther than in a will. The signature may appear at the top or bottom or in the body of the contract (*Knight v. Crockford* 1 Esp. 189; *Sims v. Landray* [1894] 2 Ch. 318); and a learned judge has even stated the rule thus widely: "If the name appears on the contract and be written by the party to be bound, or by his authority, and issued or accepted by him, or intended by him as the memorandum of a contract, that is sufficient" (*per* Blackburn J., *Durrell v. Evans* 31 L.J. Ex. 345, where the previous cases hereon were collected; but see thereon *Murphy v. Boese* L.R. 10 Ex. 126). Thus, in *Schneider v. Norris* (2 M. & S. 286, following *Saunderson v. Jackson* 2 B. & P. 238), the name of the seller was printed on a bill of parcels, but he wrote thereon the name of the purchaser, and that was held to be an adoption by the seller of his own printed name, and a signature within the Statute of Frauds. Assuming that case to be the law then, *a fortiori*, tracing a former signature with a dry pen, though not a sufficient signing of a will, would be a sufficient signature to a contract. *Schneider v. Norris* has, however,

not passed entirely unquestioned, for in *Jenkyns v. Gaisford* (sup.), Cresswell J.O., said, "I always had some scruple about that case." Still, *Schneider v. Norris* was repeatedly cited as an authority in *Durrell v. Evans* (sup.), and was followed in *Tourret v. Cripps* 48 L.J. Ch. 567; and in *Evans v. Hoare* [1892] 1 Q.B. 593; see also *Jones v. Victoria Dock Co.* 2 Q.B.D. 314; *Hucklesby v. Hook* [1900] W.N. 45; *Bleakley v. Smith* 11 Sim. 150; Benj. (11th ed.) ch. 7; NOTE.

(ii) Generally speaking, all contractual documents may be signed by a duly authorised agent (*per* *Blackburn J., R. v. Kent Justices* L.R. 8 Q.B. 305; *per* *Bowen L.J., Re Whitley* sup.; *Browne v. Kinsella* 24 L.R. Ir. 98). See also *Wilson & Sons v. Pike* [1949] 1 K.B. 176; *Leeman v. Stocks* [1951] Ch. 941; *Basma v. Weekes* [1950] A.C. 441. The signature on behalf of a company of its duly authorised agent acting within the scope of his authority was the signature of the company for the purpose of s.6 of the Statute of Frauds Amendment Act 1828 (*UBAF v. European American Banking Corporation* [1984] 2 W.L.R. 508). See also para. (2) (a) (ii) above.

(iii) An auctioneer is agent to sign for vendor and purchaser, within the Statute of Frauds (*Emmerson v. Heelis* 2 Taunt. 38; *Glengall v. Barnard* 6 L.J. Ch. 25; *Sims v. Landray* sup.—on which see *Potter v. Peters* 64 L.J. Ch. 359, 360); but the authority does not extend to the clerk of the auctioneer, and even the auctioneer must sign not later than at the end of the auction (*Bell v. Balls* [1897] 1 Ch. 663). See also *Van Praagh v. Everidge* [1903] 1 Ch. 434; *Wallace v. Roe* [1903] 1 Ir. R. 32. The purchaser at an auction cannot compel the auctioneer to sign for the vendor a memorandum of the sale (*Macmanus v. Branson* 50 S.J. 508). See Law of Property Act 1925 (c. 20), ss.53 and 54. So, documents under Companies Act 1862 (c. 89) (see Companies Act 1948 (c. 38)) do not need a personal signature, and therefore a memorandum of association may be signed by an agent, who need not be authorised by deed (*Re Whitley* sup.). So, of a building society's instrument of dissolution (*Dennison v. Jeffs* [1896] 1 Ch. 611; disapproving *Second Edinburgh Society v. Aitken* 29 Sc. L.R. 456). See further IN WRITING.

(iv) But an acknowledgment under Lord Tenterden's Act (Statute of Frauds Amendment Act 1828 (c. 14)) to take a case out of the Statute of Limitations, had to be signed by the person himself (*Hyde v. Johnson* 5 L.J.C.P. 291; *Williams v. Mason* 21 W.R. 386); see also HIMSELF; HIS HAND; OWN CONSENT; *Toms v. Cum- ing* inf., under Electioneering Papers, sub. para. (f); *Hirst v. West Riding Union Banking Co.* [1901] 2 K.B. 560, cited PERSON.

(v) As to when the individual signature of a partner will bind his firm, see *Brogden v. Metropolitan Railway* 2 App. Ca. 666.

(d) Bills of exchange and promissory notes. (i) "No person is liable as drawer, indorser, or acceptor, of a bill who has not signed it as such: provided that—

"(1) where a person signs a bill in a trade or assumed name, he is liable thereon as if he had signed it in his own name;

"(2) the signature of the name of a firm is equivalent to the signature by the person so signing of the names of all persons liable as partners in that firm"

(Bills of Exchange Act 1882 (c. 61), s.23); and so of the maker or indorser of a promissory note (s.89, *ibid.*).

"(1) Where, by this Act, any instrument or writing is required to be signed by any person, it is not necessary that he should sign it with his own hand, but it is sufficient if his signature is written thereon by some other person by or under his authority.

"(2) In the case of a corporation, where, by this Act, any instrument or writing is

required to be signed, it is sufficient if the instrument or writing be sealed with the corporate seal" (s.91, *ibid.*).

(ii) Where a cheque drawn on a partnership bank account bore the printed name of the partnership and the signature of one partner there was a sufficient "signature" on the cheque for the purposes of s.23(2) of the Bills of Exchange Act 1882 (c. 61); sufficient to make the other partner liable to the payee for the amount of the cheque (*Ringham v. Hackett* (1980) 124 S.J. 201).

(e) Solicitor's bills, etc. (i) By Solicitors Act 1843 (c. 73), s.37 (see Solicitors Act 1932 (c. 37), s.65), no action could be brought on a Solicitor's Bill until one month after its delivery, "and which bill shall either be subscribed with the proper hand of such solicitor (or in the case of a partnership, by any of the partners, either with his own name or with the name or style of such partnership), or of the executor, administrator, or assignee, of such solicitor, or be enclosed in or accompanied by a letter, subscribed in like manner, referring to such bill"; see thereon *Re Bush* 14 L.J. Ch. 6; *Pilgrim v. Hirschfeld* 12 W.R. 51; *Penley v. Anstruther* 52 L.J. Ch. 367; *Ingle v. M'Cutchan* 12 Q.B.D. 518.

(ii) The doctrine of *Durrell v. Evans* sup., as expressed in *Evans v. Hoare* sup., is applicable to agreements in writing relating to a solicitor's costs (*Re Frape* [1893] 2 Ch. 284).

(iii) A bill of costs accompanied by a letter bearing a rubber stamp signature of the solicitor who had himself stamped the letter was duly "signed" (*Goodman v. J. Eban* [1954] 1 Q.B. 550).

(f) Electioneering papers. (i) Signatures to electioneering papers have a few special requirements distinct from other classes of signatures. In the first place, an objector must sign the objection himself, and not by an agent (*Toms v. Cumming* 14 L.J.C.P. 67; *Lewis v. Roberts* 11 C.B.N.S. 23); but a claim to vote need not be personally signed by the claimant (*Davies v. Hopkins* 27 L.J.C.P. 6; *Brown v. Tombs* [1891] 1 Q.B. 253). So, the signature to a voting paper, *semble*, need not be a personal act, for in *R. v. Avery* (21 L.J.Q.B. 430), Campbell C.J., said, "the burgess is to sign, or to have another to write his name for him in the shape of a signature." This was, however, an obiter dictum; the point decided in that case being that where a party is required merely to sign his name to an electioneering paper, his usual mode of signature is sufficient. If, however, there were only an initial for the surname, this would seem not enough; for the object of this kind of signature is not merely to authenticate the document but also to give strangers notice who is the party by whom the signature is made. Accordingly, in the days of open voting, a voting paper had to be signed by the voter's correct name; with this exception, if the burgess roll mentioned him by a wrong name he might vote in the name by which he was therein mentioned (*R. v. Thwaites* 22 L.J.Q.B. 238). And so, if a mark be used to sign an electioneering paper, it would seem that there must be the correct name of the person written against the mark; for a mere mark would not, *semble*, complete such a signature, as it would if the document were a will or contract. For the same reason the legibility of the signature, though wholly immaterial in a will or contract if it can be in any manner identified, may become an objection to a signature to an electioneering paper; but if such a signature is illegible by itself, but can be made out by reference to the register of voters or other extraneous public document, it will be sufficient (*Trotter v. Walker* 32 L.J.C.P. 60). It appears, however, from that case that if the illegibility were purposely in order to deceive, or if it were an utter illegibility, the signature to an electioneering paper would not be sufficient. The rule laid down in *Jenkyns v. Gaisford* sup., (*i.e.* that a stamped impression of a signature to a will is sufficient) has been extended to signatures of

electioneering papers (*Bennett v. Brumfitt* 37 L.J.C.P. 25, applied in *Whyte v. Watt* 31 Sc. L.R. 127, cited SUBSCRIBE); but, *semble*, an objector must himself, with his own hand, impress his signature (*Toms v. Cuming* sup.). Where the christian name is required to be given, it is not necessary that it should be written at full length; a well-known contraction will be sufficient (*R. v. Bradley* 30 L.J.Q.B. 180). In that case Wightman and Hill JJ., said (*obiter*) that a mere initial for the christian name would not be sufficient; but the contrary was held in *Bowden v. Besley* 21 Q.B.D. 309, if, as in that case, the person signing is sufficiently identified thereby; see also NAME. Where an objector delivers to overseers a list of the persons he objects to (instead of giving a separate notice in respect of each person), the list is well signed though the signature of the objector thereon precedes, instead of following, the list of names (*Sutton v. Wade* [1891] 1 Q.B. 269). See also *Taplin v. Hegney* 50 W.A.L.R. 4.

(ii) A revised list of voters is “signed” by the revising barrister, the clerk of the peace, or town clerk (Parliamentary Voters Registration Act 1843 (c. 18), ss.41, 47, 48), by the official manually writing his own name (*per* Byles J., *Brumfitt v. Bremner* 9 C.B.N.S. 1).

(g) Judge’s orders and legal proceedings. (i) A judge’s order is well signed by a stamped similitude of the judge’s signature being impressed thereon by his clerk at chambers (*Blades v. Lawrence* L.R. 9 Q.B. 374).

(ii) But particulars in a county court action are not “signed” by the plaintiff’s solicitor, so as to entitle him to the costs thereof, if his name is only lithographed thereon (*R. v. Fitzroy-Cowper* 24 Q.B.D. 60; in the Appeal Court, Esher M.R., was for reversing this decision, but Fry L.J., agreed with it, and so the appeal fell through; 24 Q.B.D. 533); but his name written by his authorised clerk suffices (*France v. Dutton* [1891] 2 Q.B. 208; see also County Court Rules, 1936, Ord. 7, r. 10).

(iii) Notice of a poor rate appeal was to be signed by the appellant or his “attorney on his behalf” (Poor Rate Act 1801 (c. 23), s.4); that was complied with if the notice was signed, in the appellant’s name and with his authority, by his solicitor’s clerk (*R. v. Kent Justices* L.R. 8 Q.B. 305). *Semble*, that a notice was not a condition precedent to quarter sessions’ entering and respiting the appeal (*R. v. De Grey* [1900] 1 Q.B. 521).

(iv) The signature of a town clerk to a notice under Public Health Act 1875 (c. 55), s.206, was well made by its being printed thereon (*Brydges v. Dix* 7 T.L.R. 215, where *R. v. Fitzroy-Cowper* sup., was commented on as being only of special application).

(v) The signature of a bishop, in Ecclesiastical Dilapidations Act 1871 (c. 43), ss.35, 69, might be made by a similitude of his signature impressed by a stamp (*De Beauvais v. Green* 22 T.L.R. 816, reversed on another point, 24 T.L.R. 43).

(h) Office copies. By Insolvent Debtors Act 1820 (c. 119), s.45, it was provided that proceedings thereunder should be proved by “a true copy, signed by the officer certifying the same to be a true copy”; and it was held, upon a liberal construction, that such a requirement would be satisfied by the office copy being vouched by the seal of the court (*per* Bayley B., *Doe d. Phillips v. Evans* 2 L.J. Ex. 181, 183).

(3) “Signed by him” (Bankruptcy Act 1914 (c. 59), s.16) does not cover and authorise a signature by the debtor’s solicitor (*Re Blücher (Prince) Ex p. Debtor* [1931] 2 Ch. 70).

(4) “Signed personally by the borrower” (Moneylenders Act 1927 (c. 21), s.6(1)). Where a limited company borrowed from a moneylender, a memorandum of the contract signed on behalf of the company, pursuant to s.29 of the Companies

Act 1929, by one of the directors and the secretary, was held to be "signed personally by the borrower" (*Re British Games Ltd.* [1938] Ch. 240). See Companies Act 1948 (c. 38), s.32.

(5) Notices to quit were "signed by the valuer to the council" if he authorised an assistant who signed the valuer's name (*L.C.C. v. Agricultural Food Products* [1955] 2 Q.B. 218).

"Last annual balance sheet, signed": see LAST.

Stat. Def., Water Act 1945 (8 & 9) Geo. 6, c. 42), s.55(2); River Boards Act 1948 (11 & 12 Geo. 6, c. 32), s.19(2); Highways Act 1959 (c. 75), s.281(2); Local Government Act 1972 (c. 70), s.234(2); Consumer Credit Act 1974 (c. 39), s.189; Friendly Societies Act 1974 (c. 46), s.111; Highways Act 1980 (c. 66), s.321(2).

SIGNED, ENTERED, OR OTHERWISE PERFECTED. This phrase in Bankruptcy Rules 1883, r. 130 (see now Bankruptcy Rules 1952 (S.I. No. 2113), r. 128), means that the time for appealing a bankruptcy order begins as soon as the order becomes operative (*Re Helsby* [1894] 1 Q.B. 742).

SIGNED, SEALED, AND DELIVERED. (1) A will signed and sealed by the testator, duly attested, and declared by the testator to be his will, is a good execution of a power requiring him to execute it by an instrument in writing, "signed, sealed, and delivered" by him (*Smith v. Adkins* L.R. 14 Eq. 402). See DELIVERY.

(2) A policy "signed, sealed, and delivered," is complete and binding as against the party executing it, though in fact it remains in his possession, unless there is some particular act required to be done by the other party to declare his adoption of it; and it is not necessary that the assured should formally accept or take away the policy in order to make the delivery complete (*Xenos v. Wickham* L.R. 2 H.L. 296). See also *Standing v. Bowring* 31 Ch. D. 282; *Babington v. O'Connor* 20 L.R. Ir. 254.

SILENCE. Mere silence, in the negotiation of a contract, is not the same as to suppress when there is a duty to disclose, which latter would avoid the contract (*per Chitty J.*, *Turner v. Green* [1895] 2 Ch. 205, citing *per Campbell C.*, *Walters v. Morgan* 3 D.G.F. & J. 718). See also *M'Kenzie v. British Linen Co.* 6 App. Ca. 82; *per Joyce J.*, *Seddon v. North Eastern Salt Co.* [1905] 1 Ch. 335; *Carlish v. Salt* [1906] 1 Ch. 335, cited PARTY WALL. Cp. constructive notice, under CONSTRUCTIVE; *Beyfus v. Lodge* [1925] Ch. 350.

See MATERIAL EVIDENCE; STANDING BY.

SILICA ROCK. (Various Industries (Silicosis) Scheme, 1931 (No. 342), Art. 2). Work on slate in a closed shed and not in a pit is not carrying out an operation on "silica rock" (*Roberts v. Dorothea Slate Quarries Co.* (No. 2) 176 L.T. 543).

SILK. (1) Silk watch-guards and silk dresses were included in the phrase "silks in a manufactured or unmanufactured state" as used in Carriers Act 1830 (c. 68), s.1 (*Bernstein v. Baxendale* 6 C.B.N.S. 259, overruling *Davey v. Mason C. & M.* 50). So also was silk hose (*per Willes J.*, citing *Hart v. Baxendale*, in *Bernstein v. Baxendale* 28 L.J.C.P. 267). So also was elastic silk webbing, composed on one-third silk and two-third indiarubber and cotton, the silk being the most valuable of the materials and the webbing being called in the trade "silk web" as distinguished from cotton web (*Brunt v. Midland Railway* 33 L.J. Ex. 187). The statute spoke of silks "wrought up or not wrought up with other materials"; but that did not mean

that any fabric that had silk in it was necessarily “silk” within the meaning of the Act. The court in *Brunt v. Midland Railway* (sup.) refused to define how much admixture of silk would make a fabric “silk,” and held that in cases of doubt it would be a question for the jury. Pollock C.B., said, “The line is shifted according to circumstances.” But the summary of the facts in that case as given in the judgment of Martin B., seems to supply as good an indication as could probably be stated as to what the test was to be; he said, “We have here a fabric of which the most valuable portion is silk; the face of it is silk and the object of the manufacturer is to give it a face of silk; and an ignorant person would say it was silk.”

(2) In the Statutory Classification of Merchandise, Class 5, the word silk was used in a very wide sense: see *Wilman & Sons v. Great Northern Railway Co.* 16 Ry. & Can. Traff. Cas. 395.

(3) “Soft or organzine silk”: see *Elliott v. Turner* 2 C.B. 446.

Stat. Def., Finance Act 1926 (16 & 17 Geo. 5, c. 22), s.5(2); Isle of Man (Customs) Act 1926 (16 & 17 Geo. 5, c. 27), s.8.

See WASTE SILK.

SILVA CÆDUA. “‘*Sylva cædua*,’ wood under 20 years growth; coppice-wood” (Cowel). See also SYLVA.

SILVER. “Silver” in Revenue Act 1867 (c. 90), s.1, does not mean pure silver, but merely what in common parlance is called silver (*Young v. Cook* 3 Ex. D. 101). See hereon *Scott v. Solomon* [1905] 1 K.B. 577, and *Goldsmith’s Co. v. Wyatt* [1907] 1 K.B. 95, cited PLATE.

See TREASURE TROVE.

SIMEON’S ACTS. Administration of Estates Act 1798 (38 Geo. 3, c. 87).

Transfer of Stock Act 1800 (39 & 40 Geo. 3, c. 36).

SIMILAR. (1) “Similar business”: see *Drew v. Guy* [1894] 3 Ch. 25; SAME.

(2) “Similar character” (Indictments Act 1915 (c. 90), Sched. I, r. 3). A charge of attempting to swindle underwriters by pretending that a mink coat was stolen was of a “similar character” to charges alleging attempts to swindle underwriters by setting fire to a yacht (*R. v. Clayton-Wright* [1949] L.J.R. 380). For the purposes of joinder, the nexus showing offences to be of “a similar character” is not limited to cases in which the evidence of one is admissible on the trial of the other. For offences to be regarded as of a “similar character” there must be some connection, but all that is necessary to satisfy the rule is that the offences should exhibit such similar features as to establish a *prima facie* case that they could properly and conveniently be tried together (*R. v. Kray and Others* [1970] 1 Q.B. 125). Robbery with violence and attempted larceny are offences of a “similar character” within the meaning of this rule (*Ludlow v. Metropolitan Police Commissioner* [1971] A.C. 29).

(3) “Similar circumstances”: see *Metropolitan Electric Supply Co. v. Ginder* [1901] 2 Ch. 799, cited UNDUE PREFERENCE. See also *A.-G. v. Hackney Corporation* [1918] 1 Ch. 373. Cp. LIKE.

(4) “Similar facts,” as to evidence admissible as to similar facts: see *Harris v. Director of Public Prosecutions* [1952] A.C. 694.

(5) “Similar licence” (Licensing (Consolidation) Act 1910 (c. 24), s.16) meant a licence to sell the same kind of intoxicants as were being sold at premises which were already in possession of a licence: see *R. v. Taylor* [1915] 2 K.B. 593.

(6) "Similar licence" (Licensing Act 1964 (c. 26), s.3(3)) held to mean the nearest type of licence to the existing one as was at the time permitted (*R. v. Leicester Licensing Justices, ex p. Bisson* [1968] 1 W.L.R. 729).

(7) "Similar material" (Construction (General Provisions) Regulations 1961 (No. 1580), reg. 52). A household brick is not a "similar material" to stone, concrete or slag and does not therefore fall within the ambit of reg. 52 (*Hobbs v. Robertson (C.G.)* [1970] 1 W.L.R. 980).

(8) Dock charges for articles of a "similar nature, package, value, and quality": see *Southampton Dock Co. v. Hill* 16 C.B.N.S. 567.

(9) "Welding or cutting . . . by means of an electrical, oxyacetylene or similar process" (Factories Act 1937 (c. 67), s.49), was held to refer to cutting by means of a heat process and not by means of shears which were electrically operated (*Rees v. Bernard Hastie & Co.* [1953] 1 Q.B. 328).

(10) "Similar statute" (Law of Property Act 1925 (c. 20), s.7(1)) includes the Local Government Act 1929 (c. 17) (*Tithe Redemption Commission v. Runcorn Urban District Council* [1954] Ch. 383).

"Similar services": see SAME.

"Similar structure": see PIER.

"Same or similar character." See SAME.

See LIKE; SUCH; BROADLY SIMILAR.

SIMONY. "Simony is the corrupt presentation of any one to an ecclesiastical benefice, for money, gift, or reward" (2 Bl. Com. 278; 4 *ibid.* 62). See hereon *Wright v. Davies* 1 C.P.D. 638; *Lee v. Flack* [1896] P. 145; Phil. Ecc. Law, 854–878; Jacob.

See CORRUPT; IMMORAL.

SIMPLE. See *Re Ethell and Mitchell & Butler* [1901] 1 Ch. 945, cited FEE SIMPLE.

SIMPLE CONTRACT. "Debts by simple contract are such where the contract upon which the obligation arises is neither ascertained by matter of record, nor yet by DEED or special instrument, but mere oral evidence, the most simple of any; or by notes unsealed, which are capable of more easy proof, and (therefore only) better, than a verbal promise" (2 Bl. Com. 465, 466). Cp. SPECIALTY.

SIMPLE FEE. See FEE SIMPLE.

SIMPLE LARCENY. "Simple larceny is 'the felonious taking, and carrying away, of the personal goods of another' " (4 Bl. Com. 229), *i.e.* THEFT.

SIMPLE TRUST. (1) "The simple trust is where property is vested in one person upon trust for another, and the nature of the trust, not being prescribed by the settlor, is left to the construction of law. In this case the cestui que trust has *jus habendi*, or the right to be put into actual possession of the property, and *jus disponendi*, or the right to call upon the trustee to execute conveyances of the legal estate as the cestui que trust directs.

(2) "The special trust is where the machinery of a trustee is introduced for the execution of some purpose particularly pointed out, and the trustee is not, as before, a mere passive depositary of the estate, but is called upon to exert himself actively in the execution of the settlor's intention; as where a conveyance is to trustees upon trust to sell for payment of debts" (Lewin (15th ed.). 14).

Cp. CONSTRUCTIVE; RESULTING TRUST.

SIMULTANEOUSLY. (Copyright Act 1842 (c. 45), s.3—see Copyright Act 1911 (c. 46), s.35.) When it is said that the first publication of a book may take place “simultaneously” in the United Kingdom and elsewhere, that means on the same day (*Cocks v. Purday* 17 L.J.C.P. 273; *Boosey v. Purday* 4 Ex. 145).

SINCE. As regards an increase of rent “since March 25, 1920”: see *Brakspeare & Sons Ltd. v. Barton* [1924] 2 K.B. 88.

SINE DIE. See **WITHOUT DAY.**

SINE QUA NON. See **CAUSA CAUSANS.**

SINECURE. When a clerk in Holy Orders has a living without cure of souls, he has a sinecure, *e.g.* if a clerk presented is distinct from the vicar (1 Bl. Com. 386). See also **CANON.**

SINGLE ARBITRATOR. See *Re Eyre and Leicester* [1892] 1 Q.B. 136, cited **ARBITRATION**, para. (11).

SINGLE HOUSEHOLD. “Single household” (Housing Act 1969 (c. 33), s.58(1)). A house maintained as a place of temporary refuge for ill-treated women, and which had a fluctuating population, was not a “single household” (*Simmons v. Pizzey* [1977] 3 W.L.R. 1; *Silbers v. Southwark London Borough Council* (1978) 76 L.G.R. 421).

SINGLE PERSON. (1) “Single person” (Income Tax Act 1952 (c. 10), s.256). A nominee and his principal were to be regarded as a “single person” for the purposes of this section (*Morrison Holdings v. I.R.C.* [1966] 1 W.L.R. 553).

(2) “Two or more . . . bodies corporate . . . shall be treated as a single person” (Restrictive Trade Practices Act 1956 (c. 68), s.8(9)). This does not mean that the bodies to which the section relates are to be treated as one and the same person. They remain separate suppliers for the purposes of s.7(2) (*Registrar of Restrictive Trading Agreements v. Schweppes (No. 2)* [1971] 1 W.L.R. 1148).

SINGLE PRIVATE DRAIN. See **DRAIN; SEWER.**

(Public Health Acts Amendment Act 1890 (c. 59), s.19). See *Hill v. Aldershot Corporation* [1933] 1 K.B. 259.

SINGLE SITTING. See **SITTING.**

SINGLE SPECIMEN. “Single specimen” (Road Traffic Act 1962 (c. 59), s.2(4)). The words “a single specimen” denote any given quantity of blood taken in one syringe. Provided that two equal parts are taken from this syringe and one part given to the accused it matters not that any blood remaining in the syringe is retained by the police or thrown away (*Kidd v. Kidd*; *Ley v. Donegani* [1969] 1 Q.B. 320).

SINGLE WOMAN. (1) A “single woman,” within the Bastardy Laws Amendment Act 1872 (c. 65), s.3, includes a widow (*Antony v. Cardenham Fort* 309; *R. v. Wymondham* 2 Q.B. 541), and also a married woman living apart from her husband (*R. v. Pilkington* 2 E. & B. 546; *R. v. Collingwood* 12 Q.B. 681; *Jones v. Davies* [1901] 1 K.B. 118; *Healey v. Wright* [1912] 3 K.B. 249; *Watson v. Tuckwell* 63

T.L.R. 634; *Kruhlak v. Kruhlak* [1958] 2 Q.B. 32). It also includes a married woman who during the absence of her husband overseas has committed adultery which has not been condoned (*Jones v. Evans* [1944] K.B. 582); in such a case she is not a single woman as regards her husband (*Mooney v. Mooney* [1953] 1 Q.B. 38); for this purpose a mere intention to forgive unaccompanied by the action of reinstating her in the position of a wife does not constitute condonation (*Hockaday v. Goodenough* 173 L.T. 204); but not a woman single at the time of the birth of her child who has since married and is living with her husband (*Stacey v. Lintell* 4 Q.B.D. 291), even though she took out the summons before her marriage, and service of it was prevented by the putative father (*Tozer v. Lake* 4 C.P.D. 322); nor a woman whose husband is at sea (see *Marshall v. Malcolm* 87 L.J.K.B., where *Jones v. Davies* was considered and followed; see also *Thomas v. Thomas* [1924] P. 194). But a woman single at the time of the birth of her child who subsequently marries a man not the father of that child and who later obtains a separation order, is a single woman (*Boyce v. Cox* [1922] 1 K.B. 149); but she is not a single woman if living with her husband (*Taylor v. Parry* [1951] 2 K.B. 442).

(2) "Single woman" (Application Proceedings Act 1957 (c. 55), s.1). The cases on the earlier Act were followed in *Giltrow v. Day* [1965] 1 W.L.R. 317 where it was held that as she and her husband were not living in wholly separate households the wife was not a "single woman" for the purposes of this Act. But in *Whitton v. Garner* [1965] 1 W.L.R. 313 it was held that a complainant could be a "single woman" within the meaning of this section despite the fact that she was married and living in the same house as her husband, and even though her evidence as to non-access by her husband was uncorroborated. The applicant must be a "single woman" at the date of her complaint to the court; it is immaterial that she was not so at the date of the child's birth (*Gaines v. W. (An Infant)* [1968] 1 Q.B. 782).

(3) "Single and unmarried": see *Rishton v. Cobb* 9 L.J. Ch. 110, cited UNMARRIED.

Stat. Def., Family Income Supplements Act 1970 (c. 55), s.17.

See FEME; SPINSTER; UNMARRIED.

SINK. (1) "Warranted free from particular average unless the ship is stranded, sunk, or burnt"; a ship is not "sunk" within this phrase if she springs a leak and thereby takes in a great deal of water which presses her down very low and much wets the cargo, but notwithstanding which she gets into port (*Bryant & May v. London Assurance* 2 T.L.R. 591). See STRANDING; BURN.

(2) " 'Sink into the residue' points to a charge which had been previously provided out of the fund in which it was to sink; otherwise the expression 'sink into the residue' would hardly be appropriate" (*per Cranworth C.*, *Johnson v. Webster* 24 L.J. Ch. 302). See FALL.

See EASEMENT; SEARCH.

SINKING FUND. "Sinking fund" for the redemption of debentures does not, necessarily, connote accumulation at compound interest, or any like mode of application (*Re Chicago & N. W. Granaries Co.* [1898] 1 Ch. 263).

SIR. See DEAR SIR.

SISTER. "Sister-in-law": see *Re Richards* 162 L.T. 47, cited BROTHER-IN-LAW.

"Younger sister." Stat. Def., Unemployment Insurance Act 1935 (c. 8), s.37(4) (c).

Stat. Def., Marriage Act 1949 (c. 76), s.78(1); Superannuation Act 1965 (c. 74), s.99.

See BROTHER.

SISTERS. See *Re Embury* [1914] W.N. 220.

SITE. (1) "The term 'site,' in relation to a house, building, or other erection, shall mean the whole space to be occupied by such house, building, or other erection, between the level of the bottom of the foundations and the level of the base of the walls" (Metropolis Management Act 1878 (c. 32), s.14). That definition, provided for Pt. II of the Metropolis Management Act 1878 (sup.), was applied to a bye-law made by the Metropolitan Board of Works (*Blashill v. Chambers* 14 Q.B.D. 479).

(2) For the meaning of the words "as a site," in a will, see *Re Whiteley* [1910] 1 Ch. 600.

(3) "Site" (Caravan Sites and Control of Development Act 1960 (c. 62), ss.1(4), 13(a)). "That word seems to me to connote a place habitually devoted to some purpose" (*per* Harman L.J. in *Biss v. Smallburgh R.D.C.* [1965] Ch. 335).

(4) The "site" of a canal within the meaning of s.15(3)(a) of the Rochdale Canal Act 1965 (c. xxxvii) extends to all the airspace above and the earth beneath (*Manchester Corp'n. v. Rochdale Canal Co.* (1970) 69 L.G.R. 517).

"Site value." Stat. Def., Housing Act 1969 (c. 33), Sched. 5, para. 5(2).

Stat. Def., Town and Country Planning Act 1932 (c. 48), s.53; Coal Industry Nationalisation Act 1946 (c. 59), Sched. 1, 25.

SITTING. "To lose £10 at one 'time' is to lose it by a single stake or bet; to lose at one 'sitting' is to lose it in a course of play where the company never parts, though the person may not be actually gaming the whole time" (*per* Blackstone J., *Bones v. Booth* 2 Bl. W. 1226). Therefore money won between one evening and the next in a continuous bout of gaming, except when the party adjourned to dine together, was won at one "sitting," within Gaming Act 1710 (c. 19), s.2 (*ibid.*). That was an action in which the losing party sued to recover back his losings; and it was there suggested that had the action been brought by an informer (see the section), the court would have held the sitting broken into two by the dinner. Cp. ONE TIME.

See SESSIONS.

SITUATE. (1) See IN; *Crompton v. Jarratt* 30 Ch. D. 298; *Hibon v. Hibon* 32 L.J. Ch. 374, cited MESSAGE.

(2) "Wheresoever situate" is a context which may make effects comprise realty (*Hall v. Hall* [1892] 1 Ch. 361).

(3) Dominion Government bonds, being specialties, are "situate" where they in fact are at the death of the deceased (*Royal Trust Co. v. A.-G. for Alberta* [1930] A.C. 144).

(4) Shares in a company are situate at the office of the company where they can be effectually dealt with as between the shareholder and the company (*Erie Beach Co. v. A.-G. for Ontario* [1930] A.C. 161; *R. v. Williams* [1942] A.C. 541).

(5) "Situate out of Great Britain" (Finance Act 1949 (c. 47), s.28(2)). An ocean going yacht normally berthed in Southampton, but registered in Jersey, was not "situate out of Great Britain" (*Trustee Agency Co. v. I.R.C.* [1973] 1 Ch. 254). For the purposes of estate duty, shares in foreign companies which nevertheless keep registers in Great Britain, and the certificates of which are deposited in British banks, are capable of being property "situate out of Great Britain" if the deceased

owner could, or would in practice, have dealt with the shares only from outside Great Britain (*Standard Chartered Bank v. I.R.C.* [1978] 1 W.L.R. 1160).

See **LOCALLY SITUATE**.

SITUATION. (1) That was a sufficient description “of the situation of the house or shop”—in a notice of application for a licence under Wine and Beerhouse Act 1869 (c. 27), s.7—which gave a reasonable identification; such identification would vary according to the circumstances of the locality in which the house or shop was, *e.g.* if the locality was a little village it would be sufficient to state that it was situated in that village, or, if a small town, enough would generally be done if the street of that town was given (*R. v. Penkridge Justices* 61 L.J.M.C. 132, cited **DESCRIPTION**); but if the house or shop had a number such number should have been given.

(2) “Situation of the property in respect of which he is enrolled” (Municipal Elections Act 1875 (c. 40), Sched., Form 2): see *Soper v. Basingstoke* 2 C.P.D. 440.

(3) “If in any situation fronting, adjoining or abutting on any street or public footpath,” there was any excavation or bank dangerous to passengers, the same might be ordered to be made safe (Public Health Act Amendment Act 1907 (c. 53), s.30), the excavation or bank did not need to be absolutely contiguous to the street or footpath if it was sufficiently near thereto to cause danger: see *Carshalton Urban Council v. Burrage* 80 L.J. Ch. 500.

(4) “Situation or employment,” in definition of **OFFICE**: see *R. v. Armagh* [1901] 2 Ir. R. 31, 33.

See **PUBLIC SITUATION**.

SIX FOLLOWING YEARS OF ASSESSMENT. (Finance Act 1926 (c. 22), s.33(1)), authorising a carry forward of trading losses, included the year of assessment following which the loss was incurred (*Harling v. Celyn Collieries Workmen's Institute* [1940] 2 K.B. 465).

SIX MONTHS. (1) “A six months” notice to quit means a notice served six months prior to the day the tenancy is to be determined, and is not necessarily equivalent to a “half-year’s” notice, six lunar months may frequently suffice (*Walker v. Constable* 3 Wils. 25; *Flower v. Darvy* 1 T.R. 159; *Rogers v. Hull Dock Co.* 34 L.J. Ch. 165; *Wilkinson v. Calvert* 3 C.P.D. 360; *Barlow v. Teal* 15 Q.B.D. 501; but see *R. v. Chawton* 1 Q.B. 247, cited **MONTH**; *Morgan v. Davies* 3 C.P.D. 260). Of course, if 6 “calendar” months are stipulated, the months must be reckoned by the calendar notwithstanding a local custom to the contrary (*Travers v. Mason* 45 W.R. 77).

(2) In so far as s.2(1) of the Agricultural Holdings Act 1948 (c. 63) is concerned, a letting of agricultural land for “six months periods” must be a letting for one year certain at least and therefore is not within the proviso of the said section (*Rutherford v. Maurer* [1962] 1 Q.B. 16).

See **BY LAW**; **CALENDAR MONTH**; **HALF A YEAR**; **MONTH**.

SKILL. (1) When a skilled person “is employed, there is on his part an implied warranty that he is of skill reasonably competent to the task he undertakes—*spondes peritiam artis*” (*Harmer v. Cornelius* 5 C.B.N.S. 246); *i.e.* not the very highest skill (*Rich v. Pierpoint* 3 F. & F. 35), but “that ordinary degree of skill and knowledge which would reasonably be expected from one acting in the particular employment and circumstances” (*Jenkins v. Betham* 15 C.B. 189).

(2) Skill embraces care (*Lister v. Romford Ice and Cold Storage Co.* [1957] A.C.

555). For “of what advantage to the employer is his servant’s undertaking that he possesses skill unless he undertakes also to use it” (*per* Viscount Simonds, *ibid.*).

(3) See hereon, as to the medical profession, *Lamphier v. Phipos* 8 C. & P. 479; *Rich v. Pierpoint* *sup.*:—a solicitor, *Godefroy v. Dalton* 6 Bing. 468; *Donaldson v. Haldane* 7 Cl & F. 762; *Purvess v. Landell* 12 *ibid.* 91; *Lewis v. Collard* 14 C.B. 208:—a parliamentary agent, *Bulmer v. Gilman* 4 M. & G. 108:—an architect, *Le Lievre v. Gould* [1893] 1 Q.B. 491; *Rogers v. James* 2 Hudson, 113:—a surveyor and valuer, *Jenkins v. Betham* *sup.*; *Turner v. Goulden* L.R. 9 C.P. 57:—a house agent, *Heys v. Tindall* 30 L.J.Q.B. 362:—a scene painter, *Harmer v. Cornelius* *sup.*:—a water-finder, *Pritty v. Child* 71 L.J.K.B. 512, cited RECKLESS. See also RELY.

(4) A person who is sufficiently “skilled” to act as an expert witness is one who has, by dint of training and practice, acquired a good knowledge of the science or art concerning which his opinion is sought, and the way in which he acquired his skill is immaterial (*R. v. Bummiss* 44 C.R. 262). A bank manager was held to be “specially skilled” in foreign law as to the proof of what notes were legal tender (*Ajami v. Controller of Customs* [1954] 1 W.L.R. 1405).

(5) Is not synonymous with care (*McCrone v. Riding* [1938] 1 All E.R. 157).

(6) (Betting and Lotteries Act 1934 (c. 58), s.26). For cases in which the question whether success in competitions depends to a substantial degree upon the exercise of skill, see *Witty v. World Service* [1936] Ch. 303; *Moore v. Elphick* [1945] 2 All E.R. 155; *Boucher v. Rowsell* [1947] 1 All E.R. 870. See GAMING; GAME OF CHANCE.

Cp. NEGLIGENCE; ORDINARY CARE.

SKIMMED MILK. “Skimmed milk” means milk from which the cream which naturally rises to the surface has been skimmed in the ordinary manner; therefore, where the evidence only showed that the milk had been deprived of its butter fat, there was a “disclosure” of that alteration (Sale of Food and Drugs Act 1875 (c. 63), s.9) if it was described as “skimmed milk” (*Jones v. Davies* 69 L.T. 497; *Platt v. Tyler* 58 J.P. 71); *secus*, if the evidence showed that the butter fat had been extracted to a greater extent than would result from mere skimming, *e.g.* by a separator (*Petchey v. Taylor* 78 L.T. 501). See ABSTRACTION.

SKIN. In the memorandum of a policy of marine insurance it has been held in the United States that “skins” includes deerskins (*Bakewell v. United Insurance* 2 Johns. C.A. 246), but that “skins and hides” does not include FURS (*Astor v. Union Insurance* 7 Cowen, 202).

SKY SIGN. Stat. Def., London Building Act 1894 (c. ccxiii), s.125; London Building Act 1930 (c. clviii), s.5; see hereon *London County Council v. Carwardine* 62 L.J.M.C. 40; *R. v. Vaughan* 12 T.L.R. 193, on which see *London County Council v. Savoy Hotel Co.* 12 T.L.R. 468; *Tussaud v. London County Council* 9 T.L.R. 64.

SLACK. See IRON.

SLACKEN. The obligation, where there is risk of collision, to “slacken speed, or stop and reverse if necessary” (Regulations for Preventing Collisions at Sea 1884, Art. 18—see now Regulations of 1910 (No. 1113), Art. 23), does not connote an instantaneous compliance; “a short, but a very short, time must be allowed” (*The Ngapoota* [1897] A.C. 391, approving *The Emmy Haase* 9 P.D. 81).

SLANDER. (1) (a) Slander of title is falsely and maliciously to write or speak defamatory words affecting the title of another to real or personal property. See hereon *Steward v. Young* L.R. 5 C.P. 122.

(b) "Slander of title is a false malicious statement in writing, printing, or by word of mouth injurious to any person's title to property, and causing special damage to such person" (Fraser, Libel and Slander (7th ed.), Art. 7, p. 45). See hereon *British Railway Traffic & Electric Co. v. The C.R.C. Co. and the London County Council* [1922] 2 K.B. 260, and cases therein cited.

(2) "'Slander of goods' is a form of slander of title, and the action is for making defamatory statements about a man's goods, which are actionable if they are untrue and cause him special damage and are made maliciously" (*per* Scrutton L.J., in *Greers Ltd. v. Pearman & Corder Ltd.* 39 R.P.C. 406).

See WORDS; INNUENDO; PRIVILEGED COMMUNICATION. Cp. LIBEL, which see for reference to treatises on libel and slander.

SLAUGHTER. Horse or other cattle "brought, to, or delivered at" a slaughter-house "for the purpose of being slaughtered" (Cruelty to Animals Act 1849 (c. 92), s.8): see *Edgar v. Spain* 84 L.T. 631.

SLAUGHTER-HOUSE. (1) "Slaughter-house," as used in Towns Improvement Clauses Act 1847 (c. 34), s.126, included not merely the premises where the actual slaughtering of cattle took place, but also the premises used for processes connected with or incident to the slaughtering (*Hides v. Littlejohn* 74 L.T. 24). See also *Palmer v. Powell* 84 J.P. 209.

(2) (Food and Drugs Act 1938 (c. 56), ss.57, 100(1)). The use of a farm building on a single occasion for slaughtering an animal did not amount to using the building as a slaughter-house (*Perrins v. Smith* 62 T.L.R. 72).

(3) As to what is a valid regulating bye-law, see *Collman v. Mills* [1897] 1 Q.B. 396, cited PERMIT; *Simpson v. Proctor* 33 Sc. L.R. 270.

(4) The business of a slaughter-house keeper is not, *per se*, "offensive" (*Rapley v. Smart* 10 T.L.R. 174, cited OFFENSIVE).

(5) "Slaughterhouse" (Foot and Mouth Disease (Controlled Areas Restrictions) General Order 1938 (No. 1435), art. 15) included a building within a slaughter-house complex, although it was not used exclusively for keeping animals intended for immediate slaughter; being used also for keeping animals for fattening (*Cheale (A.) v. Beckett* (1974) 72 L.G.R. 312).

Stat. Def., Slaughterhouses Act 1974 (c. 3), ss.34, 45; Food Act 1984 (c. 30), s.132.

SLAUGHTERER. "Slaughterer" (Public Health (London) Act 1891 (c. 76), s.141) did not include a labourer who occasionally killed, *e.g.* pigs, on the premises of the respective owners of the pigs (*Renfrew County Council v. Anderson* 36 Sc. L.R. 321). Cp. KNACKER. See SLAUGHTER-HOUSE.

SLAVE-TRADING. (1) "Each of the following acts, and every contract to do any one of them, is an act of slave-trading: (a) To deal or trade, in, purchase, sell, barter, or transfer slaves or persons intended to be dealt with as slaves; (b) to carry away or remove slaves or other persons as or in order to their being dealt with as slaves; (c) to import or bring into any place whatsoever slaves or other persons as or in order to their being dealt with as slaves; (d) to ship, tranship, embark, receive, detain, or confine on board any vessel slaves or other persons, for the purpose of

their being carried away or removed as or in order to their being dealt with as slaves; or for the purpose of their being imported into any place whatever as or in order to their being dealt with as slaves; (e) to fit, out, man, navigate, equip, despatch, use, employ, let, or take to freight, or on hire, any vessel, in order to do any act of slave-trading before mentioned; (f) to lend or advance, or become security for the loan or advance of money, goods, or effects, employed or to be employed in any act of slave-trading before mentioned; (g) to become guarantor or security for agents employed, or to be employed, in any act of slave-trading before mentioned; (h) to engage in any other manner in any act of slave-trading before mentioned, directly or indirectly, as a partner, agent, or otherwise; (i) to ship, tranship, lade, receive, or put on board of any vessel, money, goods, or effects, to be employed in any act of slave-trading before mentioned; (j) to take the charge or command, or to navigate, or enter and embark on board any vessel in any capacity, knowing that such vessel is employed in any act of slave-trading before mentioned, or is intended to be so employed upon the voyage or upon the occasion in which the embarkation takes place; (k) to insure slaves or property employed or intended to be employed in slave-trading" (Steph. Cr. (9th ed.) 105, 106, epitomising Slave Trade Act 1824 (c. 113), s.2). See, *ibid.* Art. 114, as to piratical slave trading.

(2) In Slave Trade Act 1873 (c. 88), s.2, " 'slave trade,' when used in relation to any particular treaty, does not include anything declared by such treaty not to be comprised in the term or in such treaty."

See EXISTING.

SLAVERY. See *per* Hargrave arg. *Sommersett's Case* 20 State Trials, 25, 26.

SLEDGE. "A bicycle is clearly not a 'sledge,' or a 'drag,' " nor is it "a carriage of the same nature as a sledge or drag" (*per* Stirling L.J., *Smith v. Kynnersley* 72 L.J.K.B. 361; see also CARRIAGE).

SLEEPING. An unfurnished room did not comply with the description "accommodation for sleeping" within the meaning of para. 22 of the Wages Regulation (Unlicensed Place of Refreshment) Order 1949 (No. 433) (*Parkinson v. Plumpton (H. & J.)* [1954] 1 W.L.R. 75).

SLIGHT. "Slight lameness," in a representation on which an accident policy is effected: see *Cruikshank v. Northern Accident Insurance* 33 Sc. L.R. 134; in that case Macdonald L.J.C., said, " 'Slight' is a word which may be used by different persons according to the variety of the views which they are in the habit of taking of things" see PARALYSIS.

SLIP. (1) "The 'slip' (in a marine policy) is in practice the complete and final contract between the parties, fixing the terms of the insurance and the premium; and neither party can, without the assent of the other, deviate from the terms thus agreed on without a breach of faith, for which he would suffer severely in his credit and future business" (*per* Blackburn J., *Ionides v. Pacific Insurance* L.R. 6 Q.B. 684. See also *Cory v. Patton* L.R. 7 Q.B. 308; 9 *ibid.* 577; *Morrison v. Universal Marine Insurance* L.R. 8 Ex. 199). It is, however, not a "policy of insurance" at all, and therefore not a "policy of sea insurance" within the Stamp Act 1891 (c. 39), nor is it even a contract to issue a policy; "it is a contract of sea insurance not enforceable" (*per* Mathew J., *Home Marine Insurance v. Smith* [1898] 1 Q.B. 829, affirmed [1898] 2 Q.B. 351).

(2) As to its admissibility to explain what policies are referred to in a re-insurance, see *Lower Rhine Insurance v. Sedgwick* [1898] 1 Q.B. 739, cited ORIGINAL POLICY. See also *Royal Exchange Assurance v. Tod* 8 T.L.R. 669.

(3) As to effect of the “slip” as regards fire insurance, see *Thompson v. Adams* 23 Q.B.D. 361.

“Accidental slip or omission”: see ACCIDENTAL; MISTAKE.

SLIP ORDER. R.S.C., Ord. 28, r. 11, now Ord. 20, r. 11, generally known as the slip order, is intended to be used where there has been an accidental slip or omission.

SLIT. Any division of the flesh or gristle of the nose, whether perpendicular or transverse, was a “slitting” within the Coventry Act (*R. v. Carroll* 1 East P.C. 395; see also *R. v. Coke* 1 East P.C. 396).

SLOPS. Slops to seamen are articles of clothing, tobacco, etc., supplied to seamen by the master of a ship during a voyage: see hereon *The Parkdale* [1897] P. 53.

SLOW. “I do not think that ‘slow’ [on a traffic sign] means any more than ‘proceed with caution’—proceed at such a speed that you can stop if, when you get to the crossing, you find somebody, or something, in the process of crossing, or about to cross’ ” (*per* Bucknill L.J., in *Buffel v. Cardox (Great Britain)* [1950] 2 All E.R. 878, n.).

SMALL. (1) It is laid down in Com. Dig. ‘Franchise’ (F.), 13, that “a corporation which has a head may give a personal command, and do small acts without deed—as it may retain a servant, a cook, butler,” etc. As regards the working of the Public Health Act 1875 (c. 55), the Legislature “intended to get rid of any discussion as to what were small matters” (*per* Brett L.J., *Hunt v. Wimbledon* 48 L.J.C.P. 212), and therefore by s.174 put the limit at £50; see also SHALL; but see *Eaton v. Basker* 7 Q.B.D. 529, cited EXCEED.

(2) A “small estate,” in and by Public Trustee Act 1906 (c. 55), s.3, was one “the gross capital value whereof is proved, to the satisfaction of the Public Trustee, to be less than £1,000”; and that had to be determined at the time of the application to the Trustee and not at the date of the death of the person whose estate had to be administered; see *Re Devereux* 55 S.J. 715. The section only applied to the estates of deceased persons.

(3) The representation by a vendor of leasehold property that the term is renewable on payment of a “small fine” is indefinite and puts the purchaser upon inquiry; but it may be fraudulent (*Fenton v. Browne* 14 Ves. 149). See DWELLING; SMALL DWELLINGS.

Bequest of “small balance”: see BALANCE.

Small Debt Court: see SHERIFF.

SMALL DWELLINGS. (1) (Settled Land Act 1925 (c. 18), Sched. 3, Pt. I, para. (xxii)) include workmen’s residential flats (*Re Paddington Estate* [1940] Ch. 43).

(2) A small dwelling, in Small Dwellings Acquisition Act 1899 (c. 44), s.1(1), was “where in the opinion of the local authority, the market value of the house” did not exceed £400.

SMALL FIRM. Stat. Def., Inner Urban Areas Act 1978 (c. 50), s.11(3).

SMITE. “A threatening posture, though an assault at common law even without a blow, is not a ‘smiting,’ ” within s.2 of the Act against quarrelling and fighting in churches and churchyards (5 & 6 Edw. 6, c. 4) (*Jenkins v. Barrett* 1 Hagg. Ecc. 15). See hereon *Wilson v. Greaves* 1 Burr. 240.

See BRAWLING.

SMOOTH-BORE GUN. See FIREARM.

SNARE. “Snare . . . or other like instrument”: see *Jones v. Davies* [1898] 1 Q.B. 405, cited OTHER. In that case Day J., said, “A snare is an instrument of destruction; it is not a net; neither is a net a snare.” Cp. ENGINE; see NET.

SNUFF. Stat. Def., Tobacco Act 1842 (c. 93), s.14; Customs and Excise Act 1952 (c. 44), s.191(3).

SO. (1) “So,” when used in connection with something to be done—*e.g.* “so completed,” or “so altered”—imports the doing of the thing in the manner and so as to satisfy the requirements previously prescribed (see *per* Smith J., *Great Western Railway v. Halesowen Railway* 52 L.J.Q.B. 479; see also *Dyke v. Gower* [1892] 1 Q.B. 220, cited MILK).

(2) “So devised” means “hereinbefore devised” (*Giles v. Melsom* L.R. 6 H.L. 24).

SO AS. “So as not to violate”: see VIOLATE.

SO DOING “For so doing”: see *Paterson v. Gas Light & Coke Co.* [1896] 2 Ch. 476, cited NEW OCCUPIER.

SO FAR AS. (1) A perfect direction or convention, wrong in itself, is not vitalised by a proviso that it is to be operative only “so far as,” “so long as,” or “as near as,” the rules of law will permit; nor will such phrases, by themselves, control the construction; but where there is a covenant to settle property, or it can be seen that a trust is executory, those and such like phrases may have application to prevent an infraction of the law, *e.g.* to avoid a construction of a bequest of chattels as heirlooms that would be obnoxious to the rule against perpetuities (*Potts v. Potts* 3 J. & La T. 353; 1 H.L. Ca. 671). See hereon *Tollemache v. Coventry* 2 Cl. & F. 611; *Scarsdale v. Curzon* 29 L.J. Ch. 249 (which contains an elaborate discussion of the cases by Wood V.-C.); *Christie v. Gosling* 35 L.J. Ch. 667; *Churchill v. Churchill* L.R. 5 Eq. 49, 50; *Talbot v. Jevers* L.R. 20 Eq. 255; *Harrington v. Harrington* L.R. 5 H.L. 87; *Exmouth v. Praed* 23 Ch. D. 158; *Re Johnson, Cockerell v. Essex* 26 Ch. D. 538; *Re Hill* [1902] 1 Ch. 537. See also *Re Kensington* [1902] 1 Ch. 203; *Pugh v. Drew* 17 W.R. 988, cited EQUITABLE; *Portman v. Portman* [1922] 2 A.C. 473, cited HEIRS. See HEIRLOOMS.

(2) So a covenant in restraint of trade too wide in its terms and therefore inoperative, is not saved by being expressed to be “so far as the law allows”; the parties must themselves agree and properly state the limits of time and space within which the covenant is to operate (*Davies v. Davies* 36 Ch. D. 359).

(3) Maritime lien for disbursements or liabilities, as well as wages, “so far as the case permits” (Merchant Shipping Act 1889 (c. 46), s.1—see Merchant Shipping Act 1894 (c. 60), s.167(2)): see *Morgan v. Castlegate S.S. Co.* [1893] A.C. 38, cited “maritime lien,” under LIEN.

(4) "So far as circumstances admit": see *Westacott v. Stewart* [1898] 1 Q.B. 552.

(5) "So far as they legally can" is the same as "so long as the law for the time being permits" (*Re Hooper* [1932] 1 Ch. 38).

(6) "So far as may be necessary for the beneficial winding-up" (Bankruptcy Act 1914 (c. 59), s.56(1)). See *Clark v. Smith* [1940] 1 K.B. 126.

"So far as applicable": see APPLICABLE.

"So far as is reasonably practicable": see REASONABLY PRACTICABLE.

See POSSIBLE.

SO LONG AS. See QUAMDIU.

(1) "So long as he shall be unable to maintain himself": see *M'Intyre v. Westwood's Trustees* 32 Sc. L.R. 162, cited MAINTAIN.

(2) "So long as any principal money remains due": see *Re Moss* [1905] 2 K.B. 307, cited DUE.

(3) "So long as she remains unmarried": see *Re Howard* [1901] 1 Ch. 412; *Re Mason* [1910] 1 Ch. 695, cited UNMARRIED.

(4) "So long as any object of the trust remains unperformed" (Married Women's Property Act 1882 (c. 75), s.11): see *Cousins v. Sun Life Assurance Society* [1933] Ch. 126 (trust of policy under this Act held to continue in favour of wife's estate after her death in lifetime of husband).

(5) "So long as may be necessary to enable any person to board or alight from the vehicle" (London Parking Zones (Waiting and Loading) (Restriction) Regulations 1960 (No. 594), reg. 4(a)) must be interpreted strictly and will not, for instance, permit a driver leaving his car for five minutes to go up to his flat to collect another passenger (*Clifford-Turner v. Waterman* [1961] 1 W.L.R. 1499).

SO MUCH. "So much as in is lieth," in a Crown grant: see *per* Lord Davey, *Simpson v. A.-G.* [1904] A.C. 504, and *per* Lord Lindley [1904] A.C. 511.

SO NEAR THERETO. See NEAR THERETO AS SHE MAY SAFELY GET.

SO OFFEND. "Shall so offend" a second time (or a third time) (Night Poaching Act 1828 (c. 69), s.1) meant "a repetition of the offence of unlawfully entering, or being in, any land for the purpose of taking game, for which proceedings have been taken under the section" (*per* Alverstone C.J., *R. v. Lines* [1902] 1 K.B. 199).

SO SOON AS. Portions to be paid "as soon as conveniently could be," construed "presently," because, under the circumstances, "it was then convenient they should have their portions" (*Trafford v. Ashton* 1 P. Wms. 419).

See WHEN.

SO THAT. See IF; *Re Jones* [1898] 1 Ch. 438, cited DISPOSAL.

SO VALUED. (1) Security "so valued" (Bankruptcy Act 1883 (c. 52), Sched. 2, r. 12 —see Bankruptcy Act 1914 (c. 59), Sched. 2, r. 13) refers to r. 11, and means "the assessed value in the proof" (*Re Vautin* [1899] 2 Q.B. 549, considering *Ex p. Taylor* 13 Q.B.D. 128, as to which see *Re Button* [1905] 1 K.B. 602, cited ESTIMATE).

(2) As to amending proof by re-valuing security, see AT ANY TIME; *Re Fanshawe* [1905] 1 K.B. 170.

SOCAGE. "To hold in socage is to hold of any lord lands or tenements, yeelding to him a certaine rent by the yeare for all manner of services," of which tenure there were three kinds: (1) socage in free tenure, (2) socage in ancient tenure, (3) socage in base tenure—

"Socage in free tenure is when one holdeth of another by fealty and certaine rent for all manner of services;

"Socage of ancient tenure is that where the people held in ancient demesne, which use no other writ to have then the writ of right close, which shall be determined according to the custome of the mannour, and the monstraverunt, for to discharge them when their lord distreyneth them for to doe other services that they ought not to doe;

"Socage in base tenure is where a man holdeth in ancient demesne that may not have the monstraverunt, and for that it is called the base tenure" (Termes de la Ley).

Socage in free tenure came to be called free and common socage, and was the origin of modern freehold.

See hereon Litt., ss.117–132; Co. Litt. 85 b–93 b; FRANK FERME.

SOCHEMANS; SOKEMANNI. See COLEBERTI. " 'Socmans, alias sokemans, socmanni,' are such tenants as hold their lands and tenements by SOCAGE tenure, of which there are several kinds, viz. sokemans of frank-tenure; sokemans of base-tenure; and sokemans of ancient demesne, which last seem most properly to be called socmans" (Cowel); see also Termes de la Ley, *Stockmans*.

SOCIAL. (1) "Social, domestic or pleasure purposes." A motor policy covering these purposes held not to cover risk to passengers carried on one isolated occasion for money (*Wyatt v. Guildhall Insurance Co. Ltd.* [1937] 1 K.B. 653), includes loan of car to a friend for a pleasure drive, he to pay for the petrol and oil (*McCarthy v. British Oak Insurance Co.* 159 L.T. 215); does not include a journey to negotiate a contract for the sale of the policyholder's business (*Wood v. General Accident Fire & Life Assurance Corporation* 65 T.L.R. 53).

(2) The mere fact that the driver of a motor-vehicle is fulfilling a duty to his employers by driving the car does not necessarily mean that it is being used for other than "social, domestic or pleasure purposes" within the terms of an insurance policy (*Moody (D.H.R.) (Chemists) v. Iron Trades Mutual Insurance Co.* [1971] R.T.R. 120).

(3) "Inevitably where one has a phrase such as "social domestic or pleasure purposes" used in a policy of insurance there will be cases which fall on one side of the line and cases which fall on the other side. For my part, however much claims managers might wish it otherwise, I do not believe it is possible to state any firm principle under which it can always be predicted which side of the line a particular case will fall. It must depend on the facts of the particular case, and the facts of particular cases will vary infinitely in their detail." (*Per Roskill L.J. in Seddon v. Binions* [1978] 1 Lloyd's Rep. 381).

(4) As to the meaning of "social welfare" (Rating and Valuation (Miscellaneous Provisions) Act 1955 (c. 9), s.8(1)(a)), see *National Deposit Friendly Society Trustees v. Skegness Urban District Council* [1959] A.C. 293; *Berry v. St. Marylebone Borough Council* [1958] Ch. 406; *General Nursing Council for England and Wales v. St. Marylebone Borough Council* [1959] A.C. 540; *Derbyshire Miners Welfare Committee v. Skegness Urban District Council* [1959] A.C. 807; *Working Men's Club and Institute Union v. Swansea Corporation* [1959] 1 W.L.R. 1197.

(5) The moral, social and physical well-being of the community is not a charitable object (*I.R.C. v. Baddeley* [1955] A.C. 572).

“Social or other relationship,” see RELATIONSHIP.

SOCIETIES. “Such charities, societies, and institutions . . . as S. shall nominate”: see *Re Douglas* 35 Ch. D. 472.

Communities or societies of the Church of Rome, bound by monastic or religious vows: see MONASTIC.

SOCIETY. (1) In and by Friendly Societies Act 1875 (c. 60), s.28, “society” included “all industrial assurance companies assuring the payment of money on the death of children under the age of 10 years”: see thereon *Newbold Society v. Barlow* [1893] 2 Q.B. 128).

(2) An industrial or provident “society” is not a company (*Great Northern Railway v. Coal Co-operative Society* [1896] 1 Ch. 187, cited COMPANY, para. (9)).

(3) “Society” in connection with a private lottery (Betting and Lotteries Act 1934 (c. 58), s.24(1)): see *Keehan v. Walters* [1948] 1 K.B. 19; *Hudson v. Chamberlain* [1948] W.N. 501, both cited PRIVATE LOTTERY.

See BUILDING SOCIETY; TERMINATING; FRIENDLY SOCIETY; INDUSTRIAL AND PROVIDENT SOCIETY.

SOCKE. “Socke” (Termes de la Ley, *Priviledges*), or “sok” (*ibid.*, *Sok*), “that is suit of men in your court, according to the custome of the realme” (*ibid.*, *Sok*; see also 2 Inst. 230). See SOKE.

SODOMY. “Every one commits the felony called sodomy who (a) carnally knows any animal; or (b) being a male, carnally knows any man or any woman (*per anum*)” (Steph. Cr. (9th ed.) 169). See also INFAMOUS CRIME.

SOEVER. See WHATSOEVER.

SOIL. This word (and notably in Inclosure Acts) frequently means the surface of the land only, and does not include minerals (*Wakefield v. Buccleuch* L.R. 4 Eq. 613, following *Pretty v. Solby* 26 Bea. 606. *Wakefield v. Buccleuch* was reversed, L.R. 4 H.L. 377, but on another ground, see especially judgment of Hatherley C.; see also *Thomson v. St. Catherine's College* [1919] A.C. 468); but in the absence of a context it would mean down to the centre of the earth (see hereon *Micklethwait v. Winter* 6 Ex. 644; *Townley v. Gibson* 2 T.R. 701); see also *London & North Western Railway v. Evans* [1893] 1 Ch. 16, cited SATISFACTION; see also *Thomson v. St. Catherine's College* sup.

Power to “open and break up soil and pavement” of streets, etc.: see OPEN.

See BED; DUST; SUBSOIL; WATER.

SOJOURN. A sojourning means something more than “travelling,” and applies to a temporary, as contradistinguished from a permanent, residence (*Henry v. Ball* 1 Wheaton, 5). Cp. GUEST.

SOKE. A manor or lordship (Elph. 620, citing Spelm., *Soca*; for example, see *Beauchamp v. Winn* L.R. 6 H.L. 243). See also JACOB.

See SOCKE. Cp. SAKE.

SOKEMANNI. See SOCHEMANS.

SOLD. See BOUGHT; LAID UP. PURCHASED; SALE.

SOLDIER. (1) A militiaman "is a soldier to all intents and purposes" (*per* Campbell C.J.), and within the proviso to s.1, Poor Removal Act 1846 (c. 66), s.1 (*Horton v. Leeds* 25 L.J.M.C. 38; 5 E & B. 595); but a workman employed in an Army Works Corps was held not to be a soldier, though he be subject to the Mutiny Act (*Cook v. Paxton* 4 H. & N. 368; but see Army Act 1881 (c.58), s.190(6), *inf.*).

(2) A person in the military service of the late East India Company, was a "soldier" within Wills Act 1837 (c.26), s.11 (*Re Donaldson* 2 Cert. 386). See ACTUAL MILITARY SERVICE. Cp. ON ACTIVE SERVICE.

(3) "The persons subject to military law as soldiers," were enumerated in Army Act 1881 (c. 58), s.176; an army pensioner acting as canteen sergeant or steward was included therein (*Ex p. Flint* 33 W.R. 936); see also *Marks v. Frogley* [1898] 1 Q.B. 888; TRAINING. As to what is military law, see *Ex p. Milligan* 4 Wallace, 141, 142; MARTIAL LAW

(4) "Common soldier" (Finance Act 1894 (c. 30), s.8(1)) includes ordinary members of the Local Defence Volunteers or of the Home Guard (*Blyth v. Lord Advocate* [1945] A.C. 32).

"Setting out of souldiers": see CHARITY; PUBLIC CHARITY; SET OUT.

"Officers and soldiers": see OFFICER.

"Soldier's will": see WILL.

See POLICE; MILITARY FORCES; cp. NAVAL SERVICE.

Stat. Def., Army Act 1881 (c. 58), s.190(6); Air Force (Constitution) Act 1917 (7 & 8 Geo. 5, c. 51), Sched. 2; Wills (Soldiers and Sailors) Act 1918 (7 & 8 Geo. 5, c. 58), s.5; National Health Insurance Act 1924 (14 & 15 Geo. 5, c. 38), s.10; Unemployment Insurance Act 1935 (25 Geo. 5, c. 8), s.96(10)(d). And see S.R. & O. 1939, No. 1944.

SOLE. (1) (a) The way in which this word (when used as benefits to be taken by married women) has been judicially interpreted, is not a little curious. Mr. Hawkins in his *Treatise on Construction of Wills* (1st ed., p. 116) lays it down broadly that "a gift to or for the sole use or benefit of a woman means, *prima facie*, separate use"; *i.e.* that "sole" and "separate" in this connection are synonymous terms. For this he cites several authorities; see also *Barnes v. Forsyth* 20 L.T.O.S. 244.

(b) But in *Gilbert v. Lewis* (32 L.J. Ch. 347), Westbury C., on a review of the same authorities came to an opposite conclusion; and, in a dictum, intimated that a mere gift to the "sole" use of a woman would not give her a separate estate.

(c) That dictum, however, was cited by Mr. Hawkins (p. 118) only to discredit it; adding that, "In *Ex p. Killick* (3 Mont. D. & D. 487), Knight-Bruce V.C., said, 'I apprehend it is clear that when property is given to a woman, whether married or unmarried, for her own sole use and benefit, it is vested in her for her separate use, free from the control of the marital right.' " But see now *ibid.*, (3rd ed.), from which this dictum is omitted.

(d) In *Spirett v. Willows* (1 Ch. 520), Lord Westbury re-asserted the doctrine of *Gilbert v. Lewis*; and in *Massy v. Rowen*, L.R. 4 H.L. 288, it was again decided that the word "sole" is not equivalent to "separate" use unless such a meaning is plainly deducible from the context, (*e.g.* as in *Re Tarsey* L.R. 1 Eq. 561). But yet in *Re Fox* 28 S.J. 738, Chitty J., whilst deferring to *Massy v. Rowen*, said that some meaning must be attached to the word "sole," and if from the rest of the will no other meaning could be gathered, then the word was equivalent to "separate." This, if correct, would seem to shift the onus as laid down in *Masse v. Rowen* under which a con-

text was required to give "sole" the meaning of "separate": see also SEPARATE USE; 1 White & Tudor (9th ed.), 562.

(2) (a) "For her sole use and disposal" excludes the marital right and gives the wife a separate use (*Prichard v. Ames* T. & R. 222; *Bland v. Dawes* 17 Ch. D. 794). See DISPOSAL.

(b) Under a limitation to trustees to the use of a married woman, "for her own sole and separate use," the legal estate will pass to her notwithstanding that phrase (*Williams v. Waters* 14 M. & W. 166).

(3) "For her sole use," in a life policy effected by a married woman: see *Re Suse, Ex p. Dever* 18 Q.B.D. 660.

(4) The words "sole use and occupation" in an agreement letting part of premises to a tenant is not conclusive of whether the landlord has abandoned control of the rooms let and is thereby not in rateable occupation of them (*Helman v. Horsham and Worthing Assessment Committee* [1949] 2 K.B. 335).

(5) "Sole and exclusive fishery" is equivalent to "several fishery" (*Holford v. Bailey* 13 Q.B. 426). So, "sole" is synonymous with a "several" right of pasturage (*Hopkins v. Robinson* 2 Lev. 2).

(6) "Sole and exclusive" right to a book: see *Re Jude* [1906] 2 Ch. 595, cited ASSIGNS.

(7) A grant of the "sole and separate pasture" in A, passes all its pasture without restriction; *secus*, where such a grant is, e.g. "for two cows only" (*North v. Coe* Vaugh. 258.). See PASTURES.

"Sole and unmarried," "sole and intestate": see UNMARRIED.

Feme sole: see FEME.

SOLE AGENT. (1) Where A appoints B as his "sole agent" in a district, A is not entitled to appoint any other agent in that district, nor to effect therein any sales or transactions connected with his business except through B's agency (*Snelgrove v. Ellringham Colliery Co.* 45 J.P. 408). But an agreement that B shall be merely the "sole agent" of a business, though for a defined period, does not import that the business shall be continued during that period (*Rhodes v. Forwood* 1 App. Ca. 256, with which cp. *Ogdens v. Nelson* [1904] 2 K.B. 410; *Northey v. Trevillion* 7 Com. Ca. 201; *Emanuel v. Fermière de Vichy Cie* [1889] W.N. 150; *Hamlyn v. Wood* [1891] 2 Q.B. 488; but see *Turner v. Goldsmith* [1891] 1 Q.B. 544, cited AGENT, para. (17)).

(2) The appointment of a person to be the sole agent for the sale of property does not debar the owner from selling the property himself (*Bentall, Horsley & Baldry v. Vicary* [1931] 1 K.B. 253). But if another agent sells the property the "sole agent" will be entitled to damages estimated on the probability that he would have earned his commission (*Hampton & Sons v. George* [1939] 3 All E.R. 627).

(3) "Sole selling agent." An appointment as sole selling agent confers an exclusive right to sell the goods. The agreement creates the relationship of vendor and purchaser rather than principal and agent (*W. T. Lamb & Sons v. Goring Brick Co. Ltd.* [1932] 1 K.B. 710).

(4) As to revocation of a sole agency, see *Vynior's Case* 8 Rep. 81 b; *Doward v. Williams* T.L.R. 316; *Noah v. Owen* 2 *ibid.* 364.

Cp. "Exclusive right" to supply goods, under EXCLUSIVE RIGHT; "entire services," under ENTIRE; "whole time," under WHOLE.

SOLE AUTHOR. See *Tate v. Thomas* [1921] 1 Ch. 503.

SOLE CAUSE. “Direct and sole cause”: see **DIRECT CAUSE**.

SOLE CORPORATION. See **CORPORATION**.

SOLE DEPENDANT. See **DEPENDANT**.

SOLE EXECUTOR. “It seems doubtful whether even the appointment, by subsequent will, of a ‘sole executor’ amounts, *per se*, to a revocation of the first. See for revocation *Re Lowe* 33 L.J.P.M. & A. 155; *Re Bailey* L.R. 1 P. & M. 628. Contra, *Geaves v. Price* 32 L.J.P.M. & A. 113; *Re Leese* 31 L.J.P.M. & A. 169; *Re Morgan* L.R. 1 P. & D. 323.” 1 Jarm. (8th ed.) 199.

SOLE FISHERY. See **SOLE**; **FISHERY**.

SOLE HEIR. “I make my cousin, Giles Bridges, my sole heir and my executor”; held to pass testator’s lands and the fee simple therein (*Taylor v. Web* Style, 301, 307, 319, and *Marret v. Sly* 2 Sid. 75, cited and commented on in note, 1 Jarm. (8th ed.) 473, n. See also *Doe d. Gillard v. Gillard* 5 B. & Ald. 785, cited **EXECUTOR**; see also *Parker v. Nickson* 32 L.J. Ch. 397; **ACKNOWLEDGE**).

SOLE PASTURAGE. See **SOLE**.

SOLE RISK. See **OWNER’S RISK**.

SOLE SETTLOR. As regards accumulation, under Accumulations Act 1800 (3, c. 98), see *Re Muir* 10 Sc. L.T. 448. See Law of Property Act 1925 (c. 20), ss.164—166.

SOLE TENANT. See **SEPARATELY**; **SEVERALTY**.

SOLE TRUSTEE. This phrase in Trustee Act 1850 (c. 60), s.23, included two or more trustees who were solely entitled to any trust property (*Re Hartnall* 21 L.J. Ch. 384; *Re Hyatt* 21 Ch. D. 846). See Trustee Act 1925 (c. 19), s.51.

SOLE USE. See **SOLE**.

SOLELY. (1) Building “used solely” for a literary or scientific institution (Income Tax Act 1842 (c. 35), s.61, r. 6): see *Musgrave v. Dundee Magistrates* 8 Sess. Ca. (4th Ser.) 930, cited **LITERARY**.

(2) House occupied “solely” for trade or business (Customs and Inland Revenue Act 1878 (c. 15), s.13(1)(2)) did not include a house occupied not only for business but also for the actual dwelling of persons, not mere caretakers, who were the servants of the occupier (*per* Charles J., *Lambton v. Kerr* [1895] 2 Q.B. 233). See also *Grant v. Langston* (1900] A.C. 383, cited **HOUSE**; **PURPOSES**; **SERVANT**. See also *London & Westminster Bank v. Smith* 87 L.T. 244, cited **HOUSE**; *Union Bank of Scotland v. Inland Revenue Commissioners* 3 Fraser 771, cited **TENEMENT**; *Nichols v. Malim* [1906] 1 K.B. 272, cited **THEREWITH**; *Smiles v. Merchant Co. of Edinburgh* 17 Rettie, 151.

(3) A vehicle sometimes used for the purpose of advertising—being painted and placarded as an advertisement, or used for carrying about a band in order to make public announcement—was not used “solely” in the course of trade so as to give exemption from duty, within Inland Revenue Act 1869 (c. 14), s.19(6) (*Speak v.*

Powell L.R. 9 Ex. 25). See also *Hanworth v. Williams* 67 J.P. 315, and *Moore v. Lewis* [1906] 1 K.B. 27, both cited *CARRIAGE*; *Cook v. Hobbs* [1911] 1 K.B. 14, cited *BURDEN*; *Strutt v. Clift* [1911] 1 K.B. 1. See *WHOLLY*.

(4) "Solely used for some purpose other than the manufacturing process or handicraft" (Factory and Workshop Act 1901 (c. 22), s.149(4)): see *London Co-operative Society Ltd. v. Southern Essex Assessment Committee* [1942] 1 K.B. 53. See now Factories Act 1937 (c. 67), s.151(6), on which see *Cox v. Cutler & Sons and Hampton Court Gas Co.* [1949] L.J.R. 294.

(5) "Solely seized": see *Copeslake v. Hoper* [1908] 2 Ch. 10, cited *HERIOT*.

(6) A cattle breeding centre is "used solely in connection with agricultural operations" within Rating and Valuation (Apportionment) Act 1928 (c. 44), s.2(2) (*Thompson v. Milk Marketing Board* [1952] 2 Q.B. 817). A building used for cooling, pasteurising and bottling milk, only one fifth of which had been produced on the ratepayer's farm, was not used "solely in connection with agricultural operations thereon." The production of milk and not the more limited operation of cooling, pasteurising and bottling was the "agricultural operation" in question (*Perrins v. Draper* [1953] 1 W.L.R. 1178). See also *Farmers' Machinery Syndicate v. Shaw* [1961] 1 W.L.R. 393).

(7) "Solely in connection with agricultural operations" (General Rate Act 1967 (c. 9), s.26(4)(a)). A building owned by a farmers' co-operative in addition to being used by members for the transit of produce, was also frequently used by probationer non-members for the sale of their produce by auction. It was held that this use by non-members amounted to merchandising in an independent commercial and business sense, so that the building was not used "solely in connection with agricultural purposes" (*Corser v. Gloucestershire Marketing Society* (1980) 79 L.G.R. 393).

(8) "Solely for the purposes of that hospital" (National Health Service Act 1946 (c. 81), ss.6(1), 7(10)). These words were held to cover the case of a home for incurables even although the trustees had powers to sell and apply the proceeds to other charitable purposes (*Re Marjoribanks' Trust Deed, Frankland v. Ministry of Health* [1952] Ch. 181), but not to a fund held on trust to pay the income to an infirmary for a limited period only (*Re Galloway, Hollins v. A.-G. of the Duchy of Lancaster* [1952] 1 All E.R. 1379).

SOLEMNIZATION. The "solemnization" of a marriage—as the word is used in a marriage settlement as thus, "until the solemnization of the said intended marriage"—means the consummation of a valid and effectual marriage; and the uses or trusts "until" that event are not defeated by the solemnization of an illegal marriage, although it may seem that an illegal marriage was in the contemplation of the parties (*Chapman v. Bradley* 33 L.J. Ch. 139; *Pawson v. Brown* 13 Ch. D. 202; *Neale v. Neale* 15 T.L.R. 20; *Addington v. Mellor* 29 S.J. 131). So, if a marriage be duly declared null and void in consequence of the impotence of either party, it never was "solemnized" (*Re Garnett* 74 L.J. Ch. 570; applied in *Re Wombwell's Settlement* [1922] 2 Ch. 298).

SOLEMNLY. Where a thing, e.g. an oath, has to be done "solemnly," that "does not merely mean religiously, but means with all due solemnities" (*per* Brett M.R., *A.-G. v. Bradlaugh* 14 Q.B.D. 667).

SOLICIT. (1) Soliciting a servant to defraud his master: see *R. v. De Kromme* 66 L.T. 301.

(2) An agreement not to “curry or solicit” custom within a named district is broken by a letter soliciting business received in the district though posted outside it (*Cullard v. Taylor* 3 T.L.R. 698). See CARRY ON.

(3) To obtain contributions to a silver watch club was to “solicit, take, or receive, an order” for silver, within Revenue Act 1867 (c. 90), s.17 (*Killick v. Graham* [1896] 2 Q.B. 196).

(4) It was a “soliciting” an order under the section without having a licence if the solicitation took place at unlicensed premises, although the tradesman was licensed at other premises from which the order was executed (*Elias v. Dunlop* [1906] 1 K.B. 266; cp. *Stallard v. Marks* 2 Q.B.D. 412 cited RETAILER); for every “excise licence to carry on any trade or business (except the trade or business of an appraiser, auctioneer, or hawker) only authorises the person to whom the licence is granted to carry on the trade or business mentioned therein in one set of premises to be specified in the licence” (*per* Lawrence J., *Elias v. Dunlop* *sup.*).

(5) “Solicit” (Solicitors Practice Rules 1936, r. 4(a)) means “asks for” or “seeks” (*Re A Solicitor* [1945] K.B. 368).

(6) “Solicit for immoral purposes” (Vagrancy Act 1898 (c. 39), s.1): see *Horton v. Mead* [1913] 1 K.B. 154; *Little v. Treadbury* [1910] 2 K.B. 658.

(7) “Persistently to solicit or importune” (Sexual Offences Act 1956 (c. 69), s.32) does not include the advertisement of services by a male prostitute by means of a card displayed on a notice board. The person concerned must be physically present (*Burge v. D.P.P.* [1962] 1 W.L.R. 265). Persistent importuning by a man of a woman to have sexual intercourse with him is not an offence within this section (*Crook v. Edmondson* [1966] 2 Q.B. 81).

(8) A prostitute does not “solicit” (Street Offences Act 1959 (c. 57), s.1(1)) unless she is physically present and her conduct amounts to an importuning of prospective customers. The mere display on a notice-board of a card advertising her services is not, therefore, soliciting (*Weisz v. Monahan* [1962] 1 W.L.R. 262). A prostitute who sits in a provocative attitude behind an illuminated window so as to advertise her profession to passers-by in the street, “Solicits in a street” within the meaning of this section (*Behrendt v. Burrridge* [1977] 1 W.L.R. 29).

See also CALL UPON; TRAVELLER; PERSUADE; ACCESSORY; cp. AID OR ABET.

SOLICITOR. (1) In a High Court action, a solicitor to one of the parties remains his solicitor as long as anything more has to be done in the action, unless his authority is revoked (*Pole v. Dick* 29 Ch. D. 351); but that case left it doubtful as to whether the solicitor’s authority continued until the expiration of the time for appealing to the Court of Appeal. That doubt was solved by R.S.C., Ord. 7, r. 3, which provided that, if there be no change of solicitor, the “solicitor shall be considered the solicitor of the party until the final conclusion of the cause or matter, whether in the High Court or the Court of Appeal.” But that doctrine only applied to the High Court; a notice of appeal against a bastardy order was not well served on the solicitor who obtained the order, unless such service was ratified by the applicant (*R. v. Oxfordshire Justices* [1893] 2 Q.B. 149); see also *per* James L.J., *Saffron Walden Society v. Rayner* 49 L.J. Ch. 467, but yet Settled Land Act 1882 (c. 38), s.45 (see Settled Land Act 1925 (c. 18), s.101), spoke of notice being given “to the solicitor for the trustees, if any such solicitor is known to the tenant for life.”

(2) As to general authority of a solicitor, or counsel, to effect a compromise for his client, see *Swinfen v. Swinfen* 25 L.J.C.P. 303; 26 *ibid.* 97. See also *Neale v. Gordon-Lennox* [1902] A.C. 465; *Re Newen* [1903] 1 Ch. 812, citing *Latuch v.*

Pasherante 1 Salk. 86, and *Pristwick v. Poley* 34 L.J.C.P. 189, 191. The London agent of a country solicitor, or (where an action is in a District Registry) the country agent of a London solicitor, has a like authority (*Re Newen* sup., following *dicta* in *Withers v. Parker* 28 L.J. Ex. 292; 29 *ibid.* 320). Cp. *Re Roberts* [1905] 1 Ch. 704.

(3) As to the privilege of communications between solicitor and client, see *Bullivant v. A.-G. Victoria* [1901] A.C. 196; *O'Rourke v. Darbishire* [1920] A.C. 581; *Conlon v. Conlans* [1952] 2 T.L.R. 343.

(4) As to summarily enforcing an undertaking by a solicitor not given in legal proceedings, see *United Mining Corporation v. Becher* [1910] 2 K.B. 296; *Re Marchant* [1908] 1 K.B. 998. If a testator by his will "appoints" A "to be LAW AGENT" (or solicitor) "to my trustees," that gives A no permanency in the employment; the trustees may revoke the appointment and employ another law agent or solicitor (*Cormack v. Keith* 30 Sc. L.R. 853; *Foster v. Elsley* 19 Ch. D. 518, citing *Shaw v. Lawless* 5 Cl. & F. 129, and *Finden v. Stephens* 16 L.J. Ch. 63, *Re Cleveland* [1902] 2 Ch. 351); but in *Williams v. Corbet* (6 L.J. Ch. 182), an appointment by a testator of a barrister as auditor to his estate was held irrevocable by the trustees except for misconduct; but, possibly, that is not consistent with the principles afterwards enunciated by House of Lords in *Shaw v. Lawless*.

(5) "Solicitor and own client costs" is a form used in a case where it was desired completely to indemnify the party in whose favour the order was made (49 S.J. 328). See also *Giles v. Randall* 1915] 1 K.B. 290; *Goodwin v. Storrar* [1947] K.B. 457; R.S.C., Ord. 65.

(6) Default in payment by a solicitor of costs for misconduct, etc., (Debtors Act 1869 (c. 62), s.4(4)): see *Re Strong* 32 Ch. D. 342. See also OFFICER.

(7) (a) *Semble*, the offence of "wilfully and falsely pretending to be" a solicitor (Attorneys and Solicitors Act 1874 (c. 68), s.37; see Solicitors Act 1957 (c. 27), s.19) is committed if an unqualified person acts in such a way as to induce the reasonable belief that he is claiming to act or threatens to act as though he were a duly qualified solicitor, and especially is this so if the thing he claims or threatens to do could lawfully be done only by a duly qualified solicitor, e.g. take proceedings for another person (*Re Yandell* 74 L.T. 436; *Re Fawkes* 75 *ibid.* 66; *Re Moss* 19 L.J. 126; *Re Derome* 19 L.J. 776; *Re Martin* 35 S.J. 88, all of which are magistrate's cases); but a conviction was refused where the alleged pretence consisted of a letter saying that the writer had "instructions" to take out a county court summons if a sum applied for was not paid (*Re Gennari* 76 L.T. 187). The pretence is chiefly a question of fact for the justices (*Law Society v. Bedford* 49 J.P. 215. where the alleged pretence resembled that in *Re Gennari*). So, if a creditor, when applying to his debtor, threatens to take proceedings for the recovery of the debt, a conviction against the creditor for "pretending to be" a solicitor cannot be supported (*Symonds v. Law Society* 49 J.P. 212). So, a law stationer acting for a solicitor in obtaining probate of a will does not "act as" a solicitor within Solicitors Act 1860 (c. 127), s.26 (see Solicitors Act 1932 (c. 37), s.45) (*Law Society v. Waterlow* 8 App. Ca. 407); nor if a law stationer enters a caveat for a solicitor (*Re Panton* [1901] P. 239); nor does a process server who prepares an affidavit of service which he sends to the solicitor employing him (*Re Louis* [1891] 1 Q.B. 649). Cp. *Re Ainsworth* [1905] 2 K.B. 103, cited PROCEEDING; *Edmundson v. Render* [1905] 2 Ch. at 325; *Woodbridge v. Bellamy* [1911] 1 Ch. 326; *Freeman v. Fox* 55 S.J. 650, all cited ACT. See also *Hall v. Jordan* [1947] 1 All E.R. 826; PRACTISE; CRIMINAL PRISONER.

(b) Whether the use of the description "solicitor" by a person whose name is on the roll of solicitors is a representation that he holds a practising certificate is a

question which depends upon the circumstances of the case (*Taylor v. Richardson* [1938] 159 L.T. 224).

Stat. Def., Administration of Justice Act 1925 (c. 28), s.29; Judicature Act 1925 (c. 49), s.225; Legal Aid and Advice Act 1949 (c. 51), s.17(1); Solicitors Act 1974 (c. 47), ss.1–3.

See APPRENTICE; ATTORNEY; AS SOLICITORS; AVOUÉ; CLIENT; COUNSEL; COUNTY SOLICITOR; MAINTAIN; OFFICER; OFFICIAL; SCRIVENER, note; CAUSE OF ACTION; UNDUE INFLUENCE.

SOLID MATTER. In Rivers Pollution Prevention Act 1876 (39 & 40 Vict., c. 75), s.20, “‘solid matter’ shall not include particles of matter in suspension in water”: see thereon *Ribble River Committee v. Halliwell* [1899] 2 Q.B. 385, in which see judgment of Williams L.J., as to the time of testing; this case was followed in *West Riding Rivers Board v. Rawson* 89 L.T. 369. See also *R. v. Antrim Justices* [1906] 2 Ir. R. 320, cited DELETERIOUS.

Cp. FILTHY WATER; POLLUTING.

SOLIDATA TERRÆ. 12 acres (Elph. 620).

SOLINUM. “*Unum solinum* or *solinus terræ* in Domesday booke containeth two plow-lands and somewhat lesse than an halfe; for there it is said, *septem solini*, or *solina terræ sunt 17 carucat*” (Co. Litt. 5 a). Hargrave’s note to this passage is: “Some think, that *solinus terræ* was frequently synonymous with *carucata terræ*. See Somn. Rom. Ports, 82. Cowel Interpr. ed. 1727, voc. *solinus terræ*.”

SOLLAR. The lower part of a house—a room (Elph. 620, citing Spelm. *Solarium*).

SOLUBLE. See INSOLUBLE.

SOLVENT. (Companies Act 1929 (c. 23), s.266; see Companies Act 1948 (c. 38), s.322) means that the company can pay its debts as they fall due. It does not mean “commercially solvent,” *i.e.* that the company’s assets exceed its liabilities on balance sheet figures (*Re Patrick & Lyon* [1933] Ch. 786.).

SOME. (1) A bequest of “*some* of my best linen” is uncertain and void (*Peck v. Halsey* 2 P. Wms. 387; cited 1 Jarm. (8th ed.) 475).

(2) “Some suit or action,” in Prescription Act 1832 (c. 71), s.4, means generally any suit or action in which the claim shall have been or shall be brought into question (*Cooper v. Hubbuck* 12 C.B.N.S. 456, and cases there cited).

“Some other substantial reason,” See SUBSTANTIAL; SUCH.

See ANY; NONE.

SOMERS’ (Lord) ACT. (7 & 8 Will. 3, c. 25), s.7, against creation of Fagot Votes.

SOMETIME. “‘Sometime’ is in some places put for the time just past, and ‘late’ for the time past long since, for which reason ‘late,’ used in the sense of ‘sometime,’ may be well permitted, and especially in counts, which, if they have matter of substance, shall never abate (*Wrotesley v. Adams* Plowd. 190).

SON. (1) The word “son” is quite as flexible as the word “heir,” and can as easily be read “issue male” as the word “heir” can be turned into “son” (*Jenkins v. Hughes* 30 L.J. Ch. 870). See also DEFAULT; HEIR; ISSUE; MALE.

(2) "If the word 'son' be used, not as a *designatio personæ* but with the view to the whole class or as comprising the whole of the male descendants severally and successively, then it is the manifest intention of the testator to give an estate tail" (*per* Bayley J., *Mellish v. Mellish* 2 B. & C. 533).

(3) For a collection and discussion of the cases upon the construction of "son" as a word of limitation, see 3 Jarm. (7th ed.) 1864, 1876 *et seq.*; but see thereon *Beauchant v. Usticke* [1880] W.N. 14. Whenever that word is so construed it creates an estate in tail male (*Mellish v. Mellish* *sup.*).

(4) As to a devise to "a son," see *Ashburner v. Wilson* 19 L.J. Ch. 330, cited ONE; see also *Re Bleckley* [1920] 1 Ch. 450; ELDEST.

(5) In an appointment of the remainder of a fund "to be equally divided among my sons," the sons take as a class (*Fitzroy v. Richmond* 28 L.J. Ch. 750).

(6) "Either sons or daughters," following issue, will control "issue" to mean "children" (*Farrant v. Nichols* 15 L.J. Ch. 259).

(7) "Sons and daughters" mean legitimate ones; unless those that are illegitimate are indicated (see hereon *Edmunds v. Fessey* 30 L.J. Ch. 279; *Re Fish* [1894] 2 Ch. 83; DAUGHTER; CHILD; NEPHEW; RELATIONS).

(8) "Who being a son or sons shall attain 21," in a limitation which contemplates all the children, will not exclude daughters (*Re Daniel* 1 Ch. F. 375).

(9) An illegitimate son is not a "son" within the meaning of the Inheritance (Family Provision) Act 1938 (c. 45), s.1(1) as amended by the Intestates' Estates Act 1952 (c. 64), ss.7, 8) (*Re Makein, Makein v. Makein* [1955] Ch. 194).

Stat. Def., Inheritance (Family Provision) Act 1938 (c. 45), s.5; Family Allowances and National Insurance Act 1947 (c. 6), s.12(2); Family Provision Act 1966 (c. 35), Sched. 3, para. 5; Companies Act 1967 (c. 81), ss.30(2), 31(5); Race Relations Act 1968 (c. 71), s.7(4); Housing Act 1969 (c. 33), s.86(2); Insurance Companies Act 1982 (c. 50), ss.7, 31.

"Son or daughter." Stat. Def., Social Security Act 1975 (c. 14), s.161.

See ELDEST; FIRST SON; OTHER SONS.

SON ASSAULT DEMESNE. See DEMESNE, para. (12).

SON TORT. Executor de son sort: see EXECUTOR.

Trustee de son tort: see TRUSTEE.

SOONER DETERMINATION. May be rejected as insensible; see TERM.

SORCERY. See CONJURATION; WITCH; WITCHCRAFT. Cowel defines the old offence of sorcery as "divination by lots."

SORT. "Sort," in the expression "kind or sort," is probably synonymous with "Quality" or "nature" (see DYE).

SOUGH. A sough is an underground drain or watercourse (*Chamber Colliery Co. v. Hopwood* 32 Ch. D. 555, 556). See also *Arkwright v. Gell* 8 L.J. Ex. 201.

SOUGHT. Member or person "sought to be transferred" to another company (Industrial Assurance Act 1923 (c. 8), s.23): see *Pearl Life Assurance v. Scottish Legal Life Assurance* [1901] 1 K.B. 528; *Bell v. Harker* 44 T.L.R. 33.

SOUND. (1) (a) "I think the word 'sound' "—in a warranty of a horse—"means that the animal is sound and free from disease at the time he is warranted" (*per*

Parke B., *Kiddell v. Burnard* 11 L.J. Ex. 269). In the same case Alderson B., said, "The word 'soundness' is explained and qualified by reference to the purposes for which the warranty is given. Any disease, therefore, which tends to impede the use for which the horse is designed, is an unsoundness," "use," there, meaning present use (*Elton v. Brogden* 4 Camp. 281). Thus, a cough, unless it be of quite a temporary character, is unsoundness (*Shillitoe v. Claridge* 2 Chitty, 425; *Elton v. Brogden* sup.); but in *Garment v. Barrs* (2 Esp. 673), Eyre C.J., held that a temporary injury or hurt capable of being speedily cured or removed is not unsoundness.

(b) Mere badness of shape, though rendering a horse incapable of work, is not unsoundness (*per* Alderson B., *Dickinson v. Follett* 1 Moo. & R. 299); but convexity in the cornea of the eye, making the horse shortsighted and given to shying, is unsoundness (*Holyday v. Morgan* L.J.Q.B. 9).

(c) Neither roaring (*Bassett v. Collis* 2 Camp. 523; *Onslow v. Eames* 2 Starkie, 81), nor crib-biting (*Broennenburgh v. Haycock* Holt N.P. 630), is unsoundness.

(d) Bone spavin in the hock is unsoundness, though producing no present apparent lameness (*per* Tindal C.J., *Watson v. Denton* 7 C. & P. 85); so is a visible splint on the fore leg, producing subsequent lameness, though the warranty be limited to the condition "at the time of the contract," because the jury found that the seeds of unsoundness were then existing (*Margetson v. Wright* 1 L.J.C.P. 128).

(e) A nerved horse (*Best v. Osborne* Ry. & Moo. 290), or one chest-foundered (*Atterbury v. Fairmanner* 8 Moore C.P. 32), is unsound.

(f) A receipt "for a grey four-year-old colt, warranted sound in every respect," is a warranty only for the soundness, not for the age (*Budd v. Fairmanner* 1 L.J.C.P. 16).

(2) For a bag of potatoes to be "sound" within the terms of a contract to purchase "sound bags only" there must not be any but a "negligible" amount of blight (*Glass's Fruit Markets v. Southwell, A. & Son (Fruit)* [1969] 2 Lloyd's Rep. 398).

(3) "Sound construction" (Factories Act 1937 (c. 67), s.25(1)) meant sound construction for the purpose for which the factory was intended to be used (*Mayne v. Johnstone and Cumbers* [1947] 2 All E.R. 159).

(4) "Sound management" (Agricultural Holdings Act 1948 (c. 63), s.25(1)(b)). The price at which electricity is supplied to a farm is not something which can affect the "sound management" of the farm for the purposes of this section. It merely concerns landlord's finances (*National Coal Board v. Naylor* [1972] 1 W.L.R. 908).

(5) "Sound material" (Factories Act 1937 (sup.), s.22(1)): a lift rope was not of "sound material" if a defect could have been detected by means of X-rays (*Whitehead v. James Stott* [1949] 1 K.B. 358).

(6) What was once regarded as a doctrine that a "sound price," *i.e.* a full price, implied a warranty, was rejected by Mansfield C.J., as a popular error (see *Broennenburgh v. Haycock* para. (1) (c) sup.).

Breach of contract "sounding in damages": see LIQUIDATED DAMAGES.

"Sound recording." Stat. Def., Copyright Act 1956 (c. 74), s.12.

See VICE; WARRANTED SOUND.

SOURCE. The meaning of the word "source" in s.30 of the Finance Act 1926 (c. 22) and s.21 of the Finance Act 1951 (c. 43) which dealt with the acquisition of a new source of income or of an addition to a source of income by the taxpayer, was held to be indistinguishable from the word "origin" (*Hart v. Sangster* [1956] 1 W.L.R. 1105). There is no rule of law which says that the "source" of income is the place at which the work is done for which payment is being made (*Commissioner of Taxation (Cth.) v. Mitchum* (1965) 39 A.L.J.R. 23).

See ONE TIME.

SOUTHWARK. Southwark Market was established by Southwark Market Acts 1755 (c. 23), and 1757 (c. 31). See also London Government Scheme (Southwark Borough Market) Confirmation Act 1907 (c. xlv). See hereon *Haynes v. Ford* [1911] 2 Ch. 237.

SOVERIGN. (1) "Sovereigne of the house" (Lit. s.202), "is the chiefe of the house" (Co. Litt. 136 b).

(2) "Sovereignty." A government which exercises *de facto* administrative control over a country and is not subordinate to any other government in that country is a foreign sovereign state (*The Arantzazu Mendi* [1939] A.C. 256).

See CROWN; QUEEN.

SOWM. A power to a lessor " 'to sowm or fix the number of sheep, cattle, and horses to be kept by each tenant and on each possession,' is plainly referable only to cases of pasturage held in common. The very word 'sowming' pre-supposes several small tenants on one farm, and has no application to a farm held by a single tenant" (*per Stormonth Darling* L.O., *MacLaine v. Stewart* 36 Sc. L.R. 235; see also *ibid.* 37 Sc. L.R. 623).

SPACE. "Space occupied by the goods" (Merchant Shipping Act 1894 (c. 60), s.85(2)) means (when the "goods" are horses or cattle) the space occupied by the animals with reasonable facilities for their movements (*Richmond Hill S.S. Co. v. Trinity House* [1896] 2 Q.B. 134).

"Open space": see OPEN.

See FREE SPACE; CLEAR SPACE.

SPARE. What can be "spared": see *Beverley v. A.-G.* 15 Bea. 546; reversed 6 H.L. Ca. 310. Cp. LEFT.

SPEAKER. Stat. Def., Representation of the People Act 1949 (c. 68), s.163.

SPECIAL ACT. A special Act of Parliament is one that is "directed towards a special object, or special class of objects" (*per Lord Hatherley, Garnett v. Bradley* 3 App. Ca. 950); its antithesis is a general or public Act of Parliament: see hereon *R. v. D'Oyly* 12 A. & E. 139; *Baird v. Tunbridge Wells* [1894] 2 Q.B. 867, [1896] A.C. 434; *Hill v. Haire* [1899] 1 I.R. 87. "The rule that a Special Act is not repealed by a subsequent General Act, unless an intention to repeal is expressed or necessarily implied, is laid down in numerous cases, of which *Hawkins v. Gathercole* (24 L.J. Ch. 332), *Thorpe v. Adams* (L.R. 6 C.P. 125), and *Fitzgerald v. Champneys* (30 L.J. Ch. 777) are good examples" (*per Smith* L.J., *Baird v. Tunbridge Wells* 64 L.J.Q.B. 151). But see *A.-G. v. Exeter* 80 L.J.K.B. 636, cited FINE.

SPECIAL ADAPTABILITY. (1) Special adaptability of land for waterworks: see *Re Lucas and Chesterfield Water Board* [1909] 1 K.B. 16, cited WATERWORKS.

(2) "Special suitability or adaptability of the land" (Acquisition of Land (Assessment of Compensation) Act 1919 (c. 57), s.2(3)): see *Pointe Gourde Quarrying & Transport Co. v. Sub-Intendant of Crown Lands* [1947] A.C. 565, cited PURPOSE, para. (11).

SPECIAL APPLICATION. “Special application or appropriation” of donation to a CHARITY (Charitable Trusts Act 1853 (c. 137), s.62): see *Sons of Clergy Corporation v. Skinner* [1893] 1 Ch. 178.

SPECIAL AREAS. “Special areas” (Vermin Destruction (Victoria) Act 1890): see *King v. Cheyne* [1900] A.C. 622.

Stat. Def., Inner Urban Areas Act 1978 (c. 50), s.8.

SPECIAL CASE. A special case is a written statement of the facts in a litigation, agreed to by the parties, so that the court may decide the questions in issue according to law: see VERDICT. See hereon 3 B1. Com. 378. It is also known as a case stated.

SPECIAL CIRCUMSTANCES. (1) The “special circumstances” sufficient to enable a client to get taxation of his solicitor’s bill after payment (Solicitors Act 1843 (c. 73), s.41, Solicitors Act 1957 (c. 27), s.69), may be matters appearing on the face of the bill (*Re Robinson* L.R. 3 Ex. 4; 37 L.J. Ex. 11), and must, speaking generally but not exhaustively, consist of pressure, or there must be a specified overcharge so gross as to amount to fraud (*Re Harrison* 16 L.J. Ch. 170; *Re Lacey* 25 Ch. D. 301; *Re Boycott* 29 Ch. D. 571). The majority of the Court of Appeal in *Re Boycott* adhered to this rule (which culminated in *Re Harrison*), and therefore the disapproval of it in *Re Dearden* 23 L.J. Ex. 14, and in *Re Newman* 2 Ch. 707, is much lessened. But in *Re Norman* 16 Q.B.D. 673, and *Re Chessman* [1891] 2 Ch. 289, the Court of Appeal declined to be bound by an rigid rule defining these “special circumstances.” See hereon *Watson v. Rodwell* 11 Ch. D. 150; *Re Griffith* 53 L.J. Ch. 303; *Re Hirst & Capes* [1908] 1 K.B. 982; *Jane & Kilner v. Linley* 53 S.J. 198; *Re R.E.F.* 53 S.J. 83; *Re Massey* 90 L.J. Ch. 40, cited TESTAMENTARY EXPENSES. Charging a scale fee where none applicable is a “special circumstance” (*Re Pybus* 35 Ch. D. 568); so of overcharges due to a mistake as to the proper scale-fee; or where a scale-fee is charged for work which was not all done, see *Re G.* 53 S.J. 469. So, where, on payment, a right to tax is reserved (*Re Williams* 65 L.T. 68; *Re Leggatts* 53 S.J. 84; but see *Re T.* 53 S.J. 487; cp. UNDER PROTEST). The pressure need not be by the solicitor: see *Re Solicitors* 50 T.L.R. 327.

(2) Special circumstances under Solicitors Act 1873 (c. 73), s.37 (see Solicitors Act 1957 (c. 27), s.69), justifying an allowance to a solicitor of costs of taxation though one-sixth of his bill is knocked off: see *Re Paull* 27 Ch. D. 485; *Re Mackenzie* 69 L.T. 751; *Re Collyer-Bristow & Co.* [1901] 2 K.B. 839; *Re A Solicitor*, *Re A Taxation of Costs* [1953] 2 W.L.R. 1098; but see *Re Carthew* 27 Ch. D. 485.

(3) The payment of a solicitor’s bill of costs, with a reservation as to taxation, is an important factor when considering what are “special circumstances” within s.69(2) of the Solicitors Act 1957 (c. 27) *Sanders v. Isaacs* [1971] 1 W.L.R. 240).

(4) “Special circumstances” (R.S.C. Ord. 55, r. 71, now Ord. 44, r. 23): see *Re M’Murdo* [1902] 2 Ch. 684. As to “special circumstances” under this rule entitling the court to hear a summons by a liquidator to vary a Master’s certificate in a debenture-holder’s action, see *Re Love & Co.* [1916] 1 Ch. 203. In *Jacobson v. Lee* [1949] 2 All E.R. 517, a change of solicitors and illness of the managing clerk were not special circumstances within the rule.

(5) “Special circumstances” (R.S.C. Ord. 47, r. 1(1)(a)) are circumstances which go to the enforcement of the judgment and not those which go to its validity (*T.C.*

Trustees and Another v. Darwen (J.S.) (Successors) [1969] 2 Q.B. 295). See also *Ellis v. Scott (Practice Note)* [1964] 1 W.L.R. 976).

(6) "Special circumstances" (the old R.S.C., Ord. 53A, r. 4): see *Re Beldams Patent* [1911] 1 Ch. 60. See also *Re a Debtor* 55 S.J. 48, as to special circumstances for extending the time for a bankruptcy appeal; *Re Barley* [1922] B. & C.R. 258; and *Re Cohen* [1950] 2 All E.R. 36, as to special circumstances for rescinding a receiving order.

(7) Protracted litigation is a "special circumstance" within the old R.S.C., Ord. 58, r. 15, justifying an unusually large deposit as security for costs on an appeal (*Re McHenry* 17 Q.B.D. 351; but see thereon *Re Phillips* [1896] 2 Q.B. 122). Insolvency, or other proved inability to pay costs of appeal if the appellant should be unsuccessful, is generally the "special circumstance" acted on under r. 15 for ordering a deposit as security for costs on an appeal to the Court of Appeal, but the rule is not confined to such cases (*Wheldon v. Maples* 20 Q.B.D. 331; *Brooke v. Kavanagh* 21 L.R. Ir. 474; but see thereon *McDougall v. Copestake* 34 S.J. 347). If the appeal is seen to be frivolous (*Usill v. Hales* 3 C.P.D. 206), or the appellant be a foreigner having no assets in England (*Grant v Banque Franco-Egyptienne* 47 L.J.C.P. 41), there would be such a "special circumstance." A mistake of legal advisers is not by itself a special circumstance, though the addition of other factors may amount to special circumstances (*Re Macadam (No. 2), ex p. Guillaume v. The Trustee* [1950] 1 All E.R. 659).

(8) Special circumstances for stay of execution pending an application for a new trial: see *Monk v. Bartram* [1891] 1 Q.B. 346.

(9) Any other "special circumstances" (Judicature Act, 1925 (c. 49), s.162(1)). The words relate only to special circumstances in connection with the estate itself or the administration of the estate; they do not extend to protecting a beneficiary against himself or herself (*Re Edwards-Taylor* [1951] P. 24). There are "special circumstances" within the meaning of this section, as amended, justifying the passing over of an executor, if he is old, ill and vehemently opposed to obtaining probate (*In the Estate of Biggs* [1966] P. 118), or is serving a sentence of life imprisonment (*In the Estate of S.* [1968] P. 302), or if she is a widow with a claim against the estate for personal injuries (*In the Estate of Newsham* [1967] P. 230). *Re Edwards-Taylor, supra*, was considered and seems to have been disapproved in *Re Clore, Decd.* [1982] 2 W.L.R. 314; [1982] 3 W.L.R. 228, where it was held that "special circumstances" within the meaning of this section are not limited to circumstances connected with the estate or its administration and could as here, cover the fact that both executors lived abroad.

(10) "Special circumstances" (Court of Probate Act 1857 (c. 77), s.73): see *Re Wensley* 7 P.D. 13; *Re Clayton* 11 P.D. 76; *Re Grundy* L.R. 1 P. & D. 459; *Re Richardson* L.R. 2 P. & D. 244; *Re Woodfall* L.R. 3 P. & D. 108; *Re Hale* 44 L.J.P. & M. 45; *Re Bond* 33 L.T. 71; *Re Farrands* 24 W.R. 1018; *Wells v. Brook* 25 W.R. 463; *Re Clarke* 46 L.J.P.D. & A. 16; *Re Turner* 12 P.D. 18; *Re Eccles* 61 L.T. 652; *Re Minshull* 14 P.D. 151; *Re Wash* [1892] P. 230; *Re Crawshay* [1893] P. 108; *Re Shoosmith* [1894] P. 23; *Re Peck* 29 L.J.P.M. & A. 95, followed in *Re Harling* [1900] P. 59; *Re Potter* [1899] P. 265; *Re Brotherton* [1901] P. 139; *Re Crippen* 80 L.J.P. 47; *Re Watkin* [1915] P. 24; *Re Schiff* [1915] P. 86; *Re Grundt* [1915] P. 126. See Administration of Estates Act 1925 (c. 23), s.10.

(11) (Defence (General) Regulations 1939 (No. 927), reg. 55(1D)). Special circumstances for reducing a fine had to be connected with the commission of the offence and not with the offender (*R. v. Leitz* 33 Cr. App. R. 132). The special circumstances had to be proved (*Roberts v. Evans* [1949] W.N. 53).

(12) "Special circumstances" for imposing a fine instead of imprisonment (Road Traffic Act 1930 (c. 43), s.7(4)). Possible expulsion of a student from a university and not causing danger were not "special circumstances" (*Carnegie v. Clark* 1947 S.C. (J.) 74). The circumstances had to be special to the offence, not to the offender (*Lines v. Hersom* [1951] 2 K.B. 682). See also *Aichroth v. Cottee* [1954] 1 W.L.R. 1124 (baker driving at 5 a.m. to mend broken down dough mixing machine a "special circumstance").

(13) "Special circumstances" in navigation, within Arts. 27 and 29, Regulations for Preventing Collisions at Sea 1897 (see now Regulations of 1910, Arts. 27, 29): see *The Sanspareil* [1900] P. 267. See also *The Algol* [1918] P. 7; *The Karamia* [1922] 1 A.C. 68; *The Pitgaveny* [1910] P. 215; *The King's County* 20 T.L.R. 202; *The Grovehurst* [1910] P. 316, cited STATIONARY.

(14) The "special circumstances" justifying a change of venue of an election petition (Parliamentary Elections Act 1868 (c. 125), s.11(11)) included local intimidation (*Sligo* 1 O'M & H. 300), or a great saving of expense (*Arch v. Bentinck* 18 Q.B.D. 548); but something more than mere inconvenience had to be shown (*Tewkesbury* 5 C.P.D. 544; *Cirencester* [1893] 1 Q.B. 245). See hereon *Stepney* 37 S.J. 29.

(15) "Special circumstances in the trade" (Trade Marks Act 1905 (c. 15), s.37): see *Re C's Trade Mark* 38 R.P.C. 155. See now Trade Marks Act 1938 (1 & 2 Geo. 6, c. 22), s.26(3); see also *Aktiebolaget Manus v. R. J. Fullwood and Bland* [1949] Ch. 208 (war conditions were special circumstances).

(16) As to what may constitute special circumstances in the case of a newspaper libel, justifying the defendants being compelled to disclose the name of the informants of the statements complained of, see *Lyle-Samuel v. Odhams, Ltd.* [1920] 1 K.B. 135.

(17) "Special circumstances," under Finance (No. 2) Act 1915 (c. 62), Sched. 4, Pt. 1, cl. 5, were a matter for the Inland Revenue Commissioners, and no appeal lay from their decision: see *Inland Revenue Commissioners v. Auld, Pemberton & Co.* [1919] 2 Ir. R. 66.

(18) "Special circumstances" (Finance Act 1965 (c. 25), s.44(3)). The fact of takeover negotiations being in a final stage is not a "special circumstance" which displaces a stock market price as a measure of a share's value for capital gains taxes (*Crabtree v. Hinchcliffe* [1972] A.C. 707).

(19) "Special circumstances" (Factories Act 1937 (c. 67), s.15(2)) had to be something which was being continually repeated or so often repeated as to be "specially liable," i.e. more than usually liable, to cause accidents (*Harris v. Rugby Portland Cement Co.* [1955] 1 W.L.R. 648).

(20) In order to constitute "special circumstances" excusing failure to give notification of pending redundancies under s.99(8) of the Employment Protection Act 1975 (c. 71), the circumstances must be uncommon or out of the ordinary. Insolvency alone is not a "special circumstance" within the meaning of this section (*Clarks of Hove v. Bakers' Union* [1978] 1 W.L.R. 1207). Nor is ignorance of the requirements of this section concerning consultation with the union (*Union of Construction, Allied Trades and Technicians v. H. Rooke and Son* [1978] I.C.R. 818). The economic necessity to close down a business was not of itself a "special circumstance" within the meaning of this section. Nor was the mistaken but genuine belief that there was no union to notify and consult (*Joshua Wilson and Brothers v. U.S.D.A.* [1978] 3 All E.R. 4).

(21) Ignorance of a company's obligation to notify the Secretary of State of impending redundancies cannot constitute "special circumstances" making it not

reasonably practicable to comply with this obligation under s.100(6) of the Employment Protection Act 1975 (c. 71) (*Secretary of State for Employment v. Helitron* [1980] I.C.R. 523).

(22) "Special circumstances" in which leave to appeal out of time may be allowed under the Immigration Appeals (Procedure) Rules 1972 (No. 1684), r. 11(4) should not be too narrowly interpreted (*R. v. Secretary of State for the Home Department, ex p. Mehta* [1975] 1 W.L.R. 1087).

SPECIAL CONSTABLES. Special constables (not legally exempt from serving as constables) who were resident in a disquieted parish, township, or place, or its neighbourhood, whom two or more justices should call upon to act as special constables (Special Constables Act 1831 (c. 41), s.1); *R. v. Vincent* 9 C. & P. 91; *R. v. Porter* *ibid.* 778; but "all persons willing to act," wherever resident, might be appointed (Special Constables Act 1835 (c. 43), s.1). A special constable had all the authority of an ordinary CONSTABLE, and remained a constable until his services were determined under Special Constables Act 1831, s.9 (*R. v. Porter* *sup.*).

SPECIAL CONTRACT. (1) As to the "special contract" prescribed in Carriers Act 1830 (c. 68), s.6, and in Railway and Canal Traffic Act 1854 (c. 31), s.7, see *Peek v. North Staffordshire Railway* 32 L.J.Q.B. 241; 10 H.L. Ca. 473; *Lewis v. Great Western Railway* 3 Q.B.D. 195; *Kirby v. Great Western Railway* 18 L.T. 658; *Wade & Co. v. London & North Western Railway Co.* [1921] 1 K.B. 582; *Doey v. London & North Western Railway Co.* [1919] 1 K.B. 623. See also Railways Act 1921 (c. 55), s.44.

(2) The "special contract" under the Pawnbrokers Act 1872 (c. 93), s.24, did not prevent the pawnbroker from recovering the balance of his loan remaining due after the sale of the pledge (*Jones v. Marshall* 24 Q.B.D. 269).

(3) "Special contract" (Prisons Act 1842 (c. 98), s.18): see *Bramston v. Colchester* 25 L.J.M.C. 73.

SPECIAL DAMAGE. (1) "Special damage," in contract or in tort, when shown and how pleaded: see judgment by Bowen L.J., *Ratcliffe v. Evans* [1892] 2 Q.B. 524. That learned judge there points out that "such damage is called variously in old authorities 'express loss,' 'particular damage' (*Cane v. Golding* Style, 169, 176), 'damage in fact,' 'special or particular cause of loss' (*Lawe v. Harwood* Cro. Car. 140; *Tasburgh v. Day* Cro. Jac. 484)"; also that "special damage" has been used to denote the actual and particular loss to an individual from a public nuisance (*Iveson v. Moore* 1 Raym. Ld., 486; *Rose v. Groves* 12 L.J.C.P 251).

(2) "Special damage," in slander, does not include loss of *consortium vicinorum*: see *Roberts v. Roberts* 33 L.J.Q.B. 249; see hereon *Lynch v. Knight* 9 H.L. Cas. 577. As to the loss of the hospitality of friends, if that involves a pecuniary loss, see *Davies v. Solomon* L.R. 7 Q.B. 112. Illness alleged to have been caused by the slander is too remote: see *Allsopp v. Allsopp* 29 L.J. Ex. 315. See also SLANDER.

(3) Special damage, for nuisance to highway: see *Campbell v. Paddington* [1911] 1 K.B. 896, cited NUISANCE.

(4) "Special damages" (Sale of Goods Act 1893 (c. 71), s.54): see *Bostock v. Nicholson* [1904] 1 K.B. 725, cited Loss.

SPECIAL DANGER. "Life being in special danger" on the occurrence of which a deed should be dated and carried into effect, see *Re Duke of Devonshire's Settlements* [1952] T.R. 375).

SPECIAL DEFENCE. See STATUTORY.

SPECIAL DIRECTIONS. “Special directions” from guardians authorising a prosecution under the Vaccination Acts: see *R v. Brocklehurst* [1892] 1 Q.B. 566.

SPECIAL ENTERTAINMENT. See *Lamb v. Brown* 31 Sc. L.R. 518, and *Lamb v. Stott* 36 L.R. 913, cited ENTERTAINMENT.

SPECIAL EXECUTOR. See PERSONAL REPRESENTATIVES.

SPECIAL EXPENSES. (1) (Local Government Act 1888 (c. 41), s.68; see *Bury St. Edmunds v. West Suffolk County Council* [1898] 2 Q.B. 246.

(2) A district council cannot by resolution declare to be “special expenses” within the meaning of the Local Government Act 1972 (c. 70), s.147(1)(3) any expenditure incurred acting as a contractor for some other local authority or public body (*Randall v. Tendring District Auditor* (1980) 79 L.G.R. 207).

(3) (Public Health Act 1875 (c. 55), ss.229, 230; see *Darenth Valley v. Dartford* 19 Q.B.D. 270; *Lancashire & Yorkshire Railway v. Bolton* 15 App. Ca. 323; *Sheffield v. Bradfield* 7 T.L.R. 571; *Jersey v. Uxbridge* [1891] 3 Ch. 183, cited GENERAL EXPENSES; *Horn v. Sleaford* [1898] 2 Q.B. 358.

SPECIAL FEE. “Special fees to counsel” (the old R.S.C., Ord. 65, r. 27(29)): “‘special fee,’ *i.e.* a fee paid to counsel who will only go into court on payment of a special fee in addition to the usual fees. But it is not limited to that. ‘Special fees,’ there, mean unusual or extraordinary, or generous, fees” (*per* Buckley J., *Cavendish v. Strutt* [1904] 1 Ch. 531). See hereon *Re Parson* 70 L.J. Ch. 563; *Giles v. Randall* [1915] 1 K.B. 290. But see now R.S.C., Ord. 62, r. 29.

SPECIAL GROUNDS. (1) “Special grounds” justifying an order for costs on the higher scale (the old R.S.C., Ord. 65, r. 9, but see now Ord. 62, r. 32), must relate to the importance or difficulty of the cause or matter, *e.g.* as requiring a class of witnesses more than usually expert and expensive; but the largeness of the amount involved, and charges of misrepresentation or fraud, are not such grounds (*Williamson v. North Staffordshire Railway* 32 Ch. D. 399; *Paine v. Chisholm* [1891] 1 Q.B. 531; *Assets Development Co. v. Close* [1900] 2 Ch. 717). So, great ability and diligence are not such “special grounds” (*Rivington v. Garden* [1901] 1 Ch. 561). *Cp. Nolan v. Great Northern Railway* [1902] 2 Ir. R. 431, cited EXCEPTIONAL. See also 116 L.T. 111.

(2) “Special grounds” for admitting further evidence on an appeal (the old R.S.C., Ord. 58, r. 4, but see now Ord. 59, r. 10): *Re Chennell* 8 Ch. D. 492; *Arnison v. Smith* 58 L.J. Ch. 645.

(3) “Special grounds” for excusing a husband from joining a co-respondent in a divorce action (Matrimonial Causes Act 1857 (c. 85), s.28) had to be shown by satisfactory affidavits (*Jones v. Jones* [1896] P. 165), one by the husband, uncorroborated, being insufficient (*Barber v. Barber* [1896] P. 73). As to what were such grounds, see *Hooke v. Hooke* 27 L.J.P. & M. 61; *Quicke v. Quicke* 31 L.J.P. & M. 28; *Jinkings v. Jinkings* L.R. 1 P. & D. 330; *Saunders v. Saunders* [1897] P. 89; *Sage v. Sage*, *Stockbridge v. Stockbridge* [1947] P. 71.

SPECIAL INDORSEMENT. A special indorsement of a writ, under R.S.C. Ord. 3, r. 6, now Ord. 6, r. 2, must contain particulars of goods, etc., sued on, giving dates,

so as to clearly show what the action is for (*Parpaite v. Dickinson* 38 L.T. 178; *Walker v. Hicks* 3 Q.B.D. 8; *Godden v. Corsten* [1879] W.N. 190), or a reference to an account rendered giving such particulars (*Aston v. Hurwitz* 41 L.T. 521). For examples, see Appendix C. s.4, of the Rules; see also *Smith v. Wilson* 4 C.P.D. 392; 5 *ibid.* 25; *Bickers v. Speight* 22 Q.B.D. 7.

SPECIAL INTEREST. “Special architectural or historic interest” (Town and Country Planning Act 1947 (c. 51), s.29(1)): a building may be of “special, etc. interest”: (a) by reason of its own intrinsic qualities, and (b) by reason of the qualities derived from its setting and so qualify for a building preservation order (*Iveagh v. Minister of Housing and Local Government* [1964] 1 Q.B. 395).

SPECIAL LEAVE. Where a thing cannot be done “without special ‘leave’,” that means “without leave granted on special grounds” (*Thompson v. Partridge* 23 L.J. Ch. 158; *Re Malcolmson Ir. Rep.* 10 Eq. 488). See also SPECIAL GROUNDS.

SPECIAL LICENCE. (1) “The ‘special licence’ mentioned in the Statute of Marlbridge, 1267 (c. 23), s.2, is commonly expressed by the well-known phrase ‘without impeachment of waste’ ” (*Woodhouse v. Walker* 5 Q.B.D. 404).

(2) Marriage by special licence: see Ecclesiastical Licences Act 1534 (c. 21); the right of the Archbishop of Canterbury to grant these licences was preserved by s.20, Marriage Act 1823 (c. 76), s.20, and by s.1, Marriage Act 1836 (c. 85). See hereon *Doe d. Egremont v. Grazebrook* 4 Q.B. 406; Phil. Ecc. Law, 612, 613.

SPECIAL LIMITS. See GENERAL LIMITS.

SPECIAL MEETING. “Special meeting” connotes that the persons to be convened shall have notice of the purpose of the meeting (*per Alderson B.*, *Cutbill v. Kingdom* 1 Ex. 504).

SPECIAL METHODS. “Special methods or processes of manufacture” (Patents and Designs Act 1907 (c. 29), s.38A): see *Re M.’s Application* 39 R.P.C. 261; *Re W.’s Application* 39 R.P.C. 263. Cp. Patents Act 1949 (c. 87), s.41.

SPECIAL OCCASION. (1) The “special occasion” for giving an innkeeper an extension of hours (Licensing Act 1872 (c. 94), s.29; Licensing (Consolidation) Act 1910 (c. 24), s.57; Licensing Act 1953 (c. 46), s.107; Licensing Act 1964 (c. 26), s.74(4)) must be determined by the justices to whom the application is made (*Devine v. Keeling* 2 T.L.R. 692; see also *Lamb v. Brown* 31 Sc. L.R. 518, and *Lamb v. Stott* 36 Sc. L.R. 913, cited ENTERTAINMENT; *R. v. Inglis* 37 T.L.R. 359; *R. v. B.* 38 T.L.R. 537). A “special occasion” does not necessarily arise at a particular time when a great many people are shopping (*R. v. Cheltenham Justices, ex p. Martin Bros. (Wines and Spirits)* (1955) 120 J.P. 88). Dances held by a hotel regularly twice a week for sixteen weeks were not “special occasions” (*Lemon v. Sargent* [1972] 1 W.L.R. 72), but football matches, occurring nearly every Saturday during the winter, were (*R. v. Llanidloes (Lower) Justices, ex p. Thorogood* [1972] 1 W.L.R. 68). Booking the hall of a licensed club by an outside body was not a special occasion for the club (*R. v. Metropolitan Police Commissioner, ex p. Ruxton* [1972] 1 W.L.R. 232). “Special occasion” does not include the whole period of summer time (*R. v. Sussex Justices, ex p. Babb* [1933] 2 K.B. 707); nor Good Fri-

day, Easter Sunday and each Sunday from May 28 to September 24 inclusive (*R. v. Lancashire Justices, ex p. Commissioners of Customs and Excise* 15 1 L.T. 376).

(2) "Special occasion" (Licensing Act 1964 (c. 26), s.74(4)). It is not essential that there should be some event completely external to the applicant for there to be a "special occasion" justifying a special order of exemption under this section (*Knole Park Golf Club v. Chief Superintendent, Kent County Constabulary* [1979] 3 All E.R. 829). It must, however, be special from a national or local point of view and not too frequent (*Martin v. Spalding* [1979] 1 W.L.R. 1164). See also *R. v. Corwen Justices, ex p. Edwards* [1980] 1 All E.R. 1035 where the Divisional Court in giving guidance to justices listed three questions they should consider; (1) is the occasion one capable in law of being a "special occasion." (2) is the occasion, on the material before the justices, in fact a special occasion in the locality, and (3) if so, whether as a matter of discretion the application should be granted. The occasion must be "special" in the ordinary sense of the word, it must be related to a national or local event, and those who are to benefit from the extension are to participate in one form or another in the event. The presentation in a cinema of a boxing match by closed circuit television from the U.S.A. was not a "special occasion" for the purposes of this section (*R. v. Commissioner of Police of the Metropolis, ex p. Maynard, The Times*, June 9, 1982). Twelve shooting occasions were held not to be "special" within the meaning of this section (*Chief Constable of Kent v. Deager* (1983) 147 J.P. 105).

(3) "Special occasion" (Road Traffic Act 1930 (c. 43), s.61(2)) meant, in relation to the conveyance of a private party, something which was a special occasion in the locality, not merely from the point of view of the persons forming the private party (*Miller v. Pill* [1933] 2 K.B. 308); it had to be something analogous to a race meeting; an attraction at a seaside resort lasting forty-nine days was not a special occasion (*Nelson v. Blackford* [1936] 2 All E.R. 109); nor was a cattle market regularly held (*Miller v. Pill* sup.); nor the "home" matches of a football club (*Sidery v. Evans & Peters* 160 L.T. 12); nor the collection of visitors to a holiday camp each Saturday morning for carrying to a railway station (*Victoria Motors (Scarborough) v. Wurzal* [1951] 2 K.B. 520); nor the taking of members of a working men's club on fishing trips on Sundays (*Wurzal v. Dowker* [1954] 1 Q.B. 52). A football match might be a special occasion (*Browning v. J. W. H. Watson (Rochester)* [1953] 1 W.L.R. 1172).

SPECIAL OCCUPANT. "Special occupant" of an estate pur autre vie (Wills Act 1837 (c. 26), ss.3, 6): see *Mountcashell v. More-Smyth* [1896] A.C. 158; *Re Sheppard* [1897] 2 Ch. 67; *Re Michell* [1892] 2 Ch. 87; *Northern v. Carnegie* 28 L.J. Ch. 930; *Wall v. Byrne* 2 J. & La T. 118; *King v. King* [1899] 1 I.R. 30. These last two cases laid down a rule in Ireland which is not recognised in England (*Re Irman* [1903] 1 Ch. 241).

SPECIAL POWER. (1) Special power of appointment, how executed: see POWER; *Re Hayes* 69 L.J. Ch. 591; affirmed [1901] 2 Ch. 529; *Re Huddleston* [1894] 3 Ch. 595, cited MY; *Re Sharland* [1899] 2 Ch. 536; Farwell (3rd ed.), ch. 5. Cp. GENERAL POWER.

(2) A special power is fiduciary, and the donee cannot covenant to exercise it in a particular way, though he may release it (*Re Bradshaw* [1902] 1 Ch. 447, cited GENERAL POWER). As to gathering from a will whether or not the testator had at the time a special power in his mind, see *Wrigley v. Lowndes* 77 L.J.P. 149; *Re Cooke* [1922] W.N. 45.

SPECIAL PROPERTY. Special property in animals *feræ naturæ*, and goods: see 2 B1. Com. 391 *et seq.*

SPECIAL PURPOSE. Notice specifying "special purpose" of a vestry meeting (Vestries Act 1818 (c. 69), s.1): see *R. v. Powell* L.R. 8 Q.B. 403; *Rand v. Green* 9 C.B.N.S. 470; *Smith v. Deighton* 8 Moore P.C. 179.

SPECIAL REASON. (1) "Special reasons" for modifying the rules relating to the discharge of a bankrupt (Bankruptcy Act 1890 (c. 71), s.8; see Bankruptcy Act 1914 (c. 59), s.26(2)): see *Re Stevens* [1898] 2 Q.B. 495, which shows that a recommendation to mercy by a jury would not be such a reason. See also *Re Smith* [1918-19] B. & C.R. 69; *Re Richards* 10 Morr. 136; *Re Solomons* [1904] 1 K.B. 106.

(2) "Special reasons" (Road Traffic Act 1930 (c. 43), ss.15, 35, now Road Traffic Act 1972 (c. 20), s.93 (1)). The special reasons must be peculiar to the offence and not the offender: lack of a previous conviction and the fact that the accused must drive for his living are not "special reasons" (*Whittall v. Kirby* [1947] K.B. 194); nor are ceasing to drive and going to sleep (*Duck v. Peacock* [1949] 1 All E.R. 318); the mistaken taking of a drug by a veterinary surgeon was a "special reason" (*Chapman v. O'Hagan* [1949] 2 All E.R. 690); so is sitting in the passenger's seat waiting for someone else to drive (*Jowett-Shooter v. Franklin* [1949] 2 All E.R. 730); evidence of the "special reasons" must be given (*Jones v. English* [1951] 2 T.L.R. 973); misapprehension of the legal effect of an insurance policy is not a special reason (*Knowler v. Rennison* [1947] L.J.R. 555; see also *Williamson v. Wilson* [1947] 1 All E.R. 306); but this is not so in every case, see *Labrum v. Williamson* [1947] K.B. 816; *Lyons v. May* [1948] 2 All E.R. 1062; *Reay v. Young* [1949] L.J.R. 1265 (giving a driving lesson on a lonely moorland road); if the insurers would have considered themselves liable that is a special reason (*Pilbury v. Brazier* [1951] 1 K.B. 340). Special reasons should be present for placing an accused on probation or discharging him conditionally, see *Taylor v. Saycell* [1950] 2 All E.R. 887; *Blow v. Chapman* [1947] 2 All E.R. 576; *Gardner v. James* [1948] 2 All E.R. 1069. See also *Ellice v. Henderson* [1951] C.L.Y. 4436 *Hammond v. O'Sullivan*. See also *Dennis v. Tame* [1954] 1 W.L.R. 1338 n. (airman accused punished by commanding officer not a "special reason"); *Surtees v. Benewith* [1954] 1 W.L.R. 1335 (delay in getting insurance not a "special reason"); *M'Arthur v. Henderson* 1953 S.L.T. 208 (no "special reason" where motor-hirer hired car to a person without a driving licence). The fact that the accused had made persistent, albeit unsuccessful efforts to obtain third party insurance cover was not a "special reason" (*Surtees v. Benewith* [1954] 1 W.L.R. 1335). To be suffering from diabetes without knowing it was held to be a "special reason" on a conviction for driving whilst under the influence of drink (*R. v. Wickins* (1958) 42 Cr. App. Rep. 236). Where a driver is convicted of driving with excessive blood alcohol the fact that his ability is unimpaired cannot be a "special reason" within the meaning of this section (*Brown v. Dyerson* [1969] 1 Q.B. 45), nor can the smallness of the excess (*Delaroy-Hall v. Tadman* [1969] 2 Q.B. 208). A "special reason" must be something other than the commission of the offence itself (*ibid.*). There was held to be a "special reason" where an ambulance driver, instructed to drive a pregnant woman to hospital, was told it was a matter of urgency (*R. v. Lundt-Smith* [1964] 2 Q.B. 167), and the fact that a driver is moving his car a few yards only may amount to a "special reason" for not disqualifying him on conviction of driving with excessive blood alcohol (*Coombs v. Kehoe* [1972] 1 W.L.R. 797). Or it may not (*Haime v. Walklett* [1983] R.T.R. 512). The fact that a doctor, if disqualified from driving, would be unable to practise in an area short of

doctors was not a "special reason" for non-disqualification (*Holroyd v. Berry* [1973] R.T.R. 145). Lack of knowledge about the amount of spirit one is drinking, either from inexperience or deliberate "lacing" can amount to a "special reason" (*R. v. Messom* [1973] R.T.R. 140; *Pugsley v. Hunter* [1973] 1 W.L.R. 578; *R v. Newton* [1974] R.T.R. 451; *Weatherson v. Connop* [1975] Crim. L.R. 239). The fact that a motorist himself reported the accident was held not to be a "special reason" (*Kerr v. Armstrong* [1974] R.T.R. 139). A supervening emergency can be a "special reason" but only if it is such as to justify driving after taking into account such factors as the availability of alternative transport (*Taylor v. Rajan; Fraser v. Barton* [1974] Q.B. 424; *Jacobs v. Reed* [1974] R.T.R. 81). Where a motorist genuinely believes that a police constable has asked him to drive his car, that may amount to a special reason for not disqualifying him (*R. v. McIntyre* [1976] R.T.R. 330). Driving to take some urgently needed pills to a sick wife was held not to be a "special reason" in a case where it was established that alternative means had not been considered (*Evans v. Bray* [1977] R.T.R. 24). The fact that a motorist, who has been convicted of failure to supply a laboratory specimen, would have had a defence to any charge based on the specimen's analysis is not a "special reason" for not disqualifying (*Courtman v. Masterson* [1978] R.T.R. 457). The defendant seeking to establish "special reasons" on medical grounds must produce cogent evidence of facts or of a medical condition which supports his contention; nebulous medical evidence is not enough (*Park v. Hicks* [1979] R.T.R. 259). Similarly a crisis that could have been foreseen, and where no alternative solution was sought or considered, is not a "special reason" (*Powell v. Gliha* [1979] R.T.R. 126).

(3) "Special reason" (Road Traffic Act 1972 (c. 20), s.101(2)). Where the offence of driving without due care and attention is proved, the lack of serious fault cannot amount to a "special reason" for not endorsing the licence (*Nicholson v. Brown* [1974] R.T.R. 177; *Hawkins v. Roots; Hawkins v. Smith* [1976] R.T.R. 49). Ignorance of the significance of lamp posts placed less than 200 yards apart namely that a 30 m.p.h. speed limit applies, was held not to constitute a "special reason" for non-endorsement (*Walker v. Rawlinson* [1976] R.T.R. 94). The effect which an endorsement might have on the employment of a driver is not a "special reason" for not endorsing his licence (*Jones v. Nicks* [1977] R.T.R. 72). But in deciding whether a special reason exists for not endorsing a licence in accordance with this section the court can take account of the minor nature of the offence, and the fact that the breach is unintentional (*Marks v. West Midlands Police* [1981] R.T.R. 471).

(4) (Criminal Justice Act 1948 (c. 58), s.22(1)). Reasons may be special to the offender as distinct from the offence (*R. v. Keeler* [1949] 2 All E.R. 805).

(5) Special reasons for the appointment of the Official Solicitor as a guardian ad litem on an application for an adoption order: see *Re D. X. (An infant)* [1948] W.N. 377.

(6) "Special reasons" (Rent Act 1965 (c. 75), s.33(6)). The fact that the owner of the property made no claim for mesne profits, for the period from the date of the notice to quit to the date of the possession order, was a "special reason" for making an order for costs under this section (*Wilson v. Croft* [1971] 1 Q.B. 241).

(7) "Special reasons" (Public Bodies (Admission to Meetings) Act 1960 (c. 67), s.1(2)). Lack of accommodation was held to be an adequate "special reason" for excluding the public from a meeting of a local authority committee (*R. v. Liverpool City Council, ex p. Liverpool Taxi Operators* [1975] 1 W.L.R. 701).

(8) "Special reason" (Arbitration Act 1979 (c. 42), s.1(6)(b)). A bona fide misunderstanding between a solicitor acting for one of the parties in an arbitration and

an officer involved in the proceedings, as a result of which the solicitor mistakenly believed that a request for a reasoned award had been made in time, could constitute a "special reason" why notice had not been given in time under s.1(6)(a) (*Hayn Roman & Co. SA v. Cominter (U.K.)* [1981] Com. L.R. 239).

(9) Where a High Court judge reached a different decision from that of arbitrators he considered very experienced, that did not constitute a "special reason" for granting leave to appeal under s.1(7)(b) of the Arbitration Act 1979 (c. 42) (*Pera Shipping Corporation v. Petroship S.A. (The Pera)* [1985] 2 Lloyd's Rep. 103).

SPECIAL REQUIREMENTS. (Licensing Act 1921 (11 & 12 Geo. 5, c. 42), s.1(1)(b)). As to the discretion of justices in extending permitted hours in order to suit local conditions, see *R. v. Licensing Justices for Wisbech* [1937] 2 K.B. 706.

SPECIAL RESERVE. See MILITIA.

SPECIAL RESOLUTION. See RESOLUTION.

SPECIAL RISK. (1) (Police Pensions Act 1921 (c. 31), s.33(3)). The risk had to be special to the duty which the police officer was called upon to perform, and not a risk which was special to the officer, e.g. heart disease (*Gordon v. Barnsley Policy Authority* [1948] 2 All E.R. 79).

(2) Unsafe hardboard roofing is not a "special risk ordinarily incident" to the work of a post office engineer, engaged in removing cable from a factory within the meaning of s.2(3)(b) of the Occupiers' Liability Act 1957 (c. 31) (*Woollins v. British Celanese* (1966) 1 K.I.R. 438).

SPECIAL SERVICES. (1) Special services by a railway company: see *Lancashire & Yorkshire Railway v. Gidlow* L.R. 7 H.L. 517, cited "Services Incidental," under INCIDENT.

(2) "Special services" for salvage: see *The Queen Elizabeth* 88 Ll. L. Rep. 803.

SPECIAL SESSION. A special sessions of justices was a special petty sessions called for some particular purpose: see hereon High Constables Act 1869 (c. 47), s.3; County Rates Act 1844 (c. 33), s.7. Where there was no statutory provision the clerk gave a reasonable convening notice (*R. v. Worcestershire Justices* 2 B. & Ald. 228). Special sessions for transferring alehouse licences, see Alehouse Act 1828 (c. 61), ss.4, 5; for revising jury lists, see s.10, Juries Act 1825 (c. 50), s.10; for hearing poor rate appeals, see Parochial Assessments Act 1836 (c. 96), s.6, on which see Stone, tit. *Poor Rates*.

SPECIAL SUITABILITY. "Special suitability" (Acquisition of Land (Assessment of Compensation) Act 1919 (c. 57), s.2). On the question of the basis for assessing compensation the expression "special suitability . . . for any purpose" referred to the quality of the land, as opposed to the needs of a particular purchaser (*Lambe v. Secretary of State for War* [1955] 2 Q.B. 612).

SPECIAL TAIL. See TAIL.

SPECIAL TRAIN. A special train is not necessarily one ordered by a passenger or a body of passengers; but includes a train specially provided by a railway company in substitution for, or in addition to, their ordinary service (*Walker v. London &*

South Western Railway The Times, May 18, 1882): see also ORDINARY TRAIN; TRAIN.

SPECIAL TRUST. See SIMPLE TRUST.

SPECIAL VERDICT. See VERDICT.

SPECIAL WORD. The “special and distinctive word or words,” capable of registration under s.10, Trade Marks Registration Act 1875 (c. 91), must have been used before the Act, solely and not in combination with any device, *i.e.* the word or words must alone have been the trade-mark (*Re Palmer* 24 Ch. D. 504; *Re Chorlton* 53 L.T. 337); and not one indicating a person, or type, or giving a description of the article (*Re Harrison* 42 Ch. D. 691). Cp. now Trade Marks Act 1938 (1 & 2 Geo. 6, c. 22), s.9).

See also DISTINCTIVE.

SPECIALISED VEHICLE. These words in art. 14a(3)(a) of E.E.C. Regulation 543/69 are intended to cover exclusively vehicles whose construction, fitments or other permanent characteristics guaranteed that they were used primarily for one of the specified operations; *e.g.* door-to-door selling (*q.v.*) (*R. v. Scott (Thomas) & Sons Bakers* [1984] R.T.R. 337).

SPECIALIST. See *A.-G v. Churchill's Veterinary Sanatorium Ltd.* [1910] 2 Ch. 401. See also QUALIFIED.

SPECIALLY. (1) “Specially authorised societies” (Friendly Societies Act 1875 (c. 60), s.8(5)): see *Peat v. Fowler* 55 L.J.Q.B 271; FRIENDLY SOCIETY.

(2) “Specially equipped with salvage plant” (Merchant Shipping (Salvage) Act 1916 (c. 41), s.1): see *The Morgana* [1920] P. 442.

(3) “Specially liable” (Factories Act 1937 (c. 67), s.25(2); Factories Act 1961 (c. 34), s.28(2)) means more than usually liable (*Harris v. Rugby Portland Cement Co.* [1955] 1 W.L.R. 648).

(4) “Specially limited”: see *Morris v. Duncan* [1899] 1 Q.B. 4, cited RECOVER.

(5) “Specially qualified medical board” (Silicosis and Asbestosis (Medical Arrangements) Scheme 1931, art. 5) meant specially qualified in relation to the disease in question (*Williams v. Tredegar Iron & Coal Co.* [1948] 1 All E.R. 236). See also QUALIFIED; EXPERT; SKILL.

SPECIALTY. (1) A “specialty” is a contract under seal; and a “specialty debt” is an obligation secured by such a contract, *e.g.* a bond, or mortgage. So, also, an obligation arising under a statute is a “specialty” within the meaning of the Statutes of Limitation; *e.g.* an action under 2 Edw. 6, c. 13, for carrying away corn without setting out tithes (*Talory v. Jackson* Cro. Car. 513); an action for an escape (*Jones v. Pope* 1 Wms. Saund. 36); or for calls on a shareholder in a company formed by Act of Parliament (*Cork & Bandon Railway v. Goode* 13 C.B. 826), or under the Companies Act 1862 (c. 89), ss.16, 75, 90, 134 (see Companies Act 1948 (c. 38), s.260): (*Buck v. Robson* L.R. 10 Eq. 629); or under a deed of settlement (*Re Portsmouth Banking Co.* L.R. 2 Eq. 167); or a shareholder’s right to a dividend or to an authorised return of capital duly certified by the seal of the company (*Re Drogheda Steam Packet Co.* [1903] 1 Ir. R. 512; *Re Artizans’ Land & Mortgage Corporation* [1904] 1 Ch. 796); or debentures issued by a company under statutory powers (*Re*

Cornwall Railway [1897] 2 Ch. 74); or for dues authorised by Parliament (*Shepherd v. Hills* 11 Ex. 55). But a penalty under a bye-law of a company founded by charter under the Great Seal, is not a "specialty," for such a liability springs out of the member's implied consent to obey the bye-laws, which is in effect a contract without specialty (*Tobacco Pipe Co. v. Loder* 16 Q.B. 765); so also the mere recital in a deed of a simple contract debt does not make the debt a specialty (*Ivens v. Elwes* 24 L.J. Ch. 249), so, of an acknowledgment by deed of such a debt (*Brook v. Harwood* 3 Ch. 225); but if the deed secures such debt, the debt merges and becomes a specialty (*Commissioners of Stamps v. Hope* [1891] A.C. 476), so if the deed agrees to give a specialty security (*Saunders v. Milsome* L.R. 2 Eq. 573).

(2) For a statement of the nature of a specialty debt, see *per* Lord Maugham, *R. v. Williams* [1942] A.C. 541, at pp. 554 *et seq.* Share certificates, though under seal, are not specialties, *ibid.*

(3) An action by an agricultural labourer for the difference between the wages paid to him as agreed, and those to which he had been entitled under the Agricultural Wages (Regulation) Act 1924 (c. 37), held not be an action for a specialty debt upon that statute, but an action on the simple contract with his employer, as varied by the statute (*Gutsell v. Reeve* [1936] 1 K.B. 272).

(4) (Limitation Act 1939 (c. 21), s.2(3)) meant deeds and contracts under seal (*Leivers v. Barber, Walker & Co* [1943] K.B. 385).

(5) "Specialty" (Limitation Act 1980 (c. 58), s.8). An action to enforce a tenant's right of franchisement under the Leasehold Reform Act 1967 (c. 88) was an action on a "specialty" within the meaning of this section (*Collin v. Duke of Westminster* [1985] 2 W.L.R. 553).

(6) As to rent: see *Kidd v. Boone* L.R. 12 Eq. 89; *Re Hastings* 6 Ch. D. 610.

(7) The action of debt upon "bonds and specialties" given by Fraudulent Devises Act 1691 (c. 14), s.6, against heirs and devisees of obligors, did not extend to damages on a covenant, for the context limited the "specialties" to those on which the action of debt lay (*Wilson v. Knubley* 7 East, 128).

Cp. PAROL; SIMPLE CONTRACT.

SPECIE. (1) (a) In a marine insurance where goods are insured against total loss free of average, "it is well settled that if the goods insured arrive at the port of destination existing 'in specie,' the underwriters are not liable although the goods are of no value whatever. Some question has arisen as to the meaning of 'specie.' The primitive meaning of the word is undoubtedly 'appearance'; and it is in this sense that it is commonly applied to memorandum articles. Thus, if a box of a chariot is lost and nothing but the wheels remain, these cannot be said to have the appearance of a chariot, and consequently the article no longer exists 'in specie,' and the underwriters are liable as for a total loss with salvage (*Judah v. Randal* 2 Caines Ca. 324). But it has been held that the value of the article has nothing to do with its existence 'in specie.' Thus, fish though absolutely spoiled (*Cocking v. Fraser Park*, 247), and corn which was putrid (*Neilson v. Columbian Insurance* 3 Caines Rep. 108), were both held to exist 'in specie.' And pork has been held not to lose its identity by being roasted (*Skinner v. Western Marine Insurance* 19 La. 273)" (Parsons Maritime Law, 381, cited by Mellish arg. *Duthie v. Hilton* L.R. 4 C.P. 141; see also *Cambridge v. Anderton* 2 B. & C. 691; *Saunders v. Baring* 34 L.T. 419; *The Knight of St. Michael* 14 T.L.R. 191).

(b) But the test applicable to such cases as those just referred "is, whether as a matter of business, the nature of the thing has been altered. The nature of a thing is not necessarily altered because the thing itself has been damaged; wheat or rice

may be damaged, but may still remain the things dealt with as wheat or rice in business. But if the nature of the thing is altered and it becomes, for business purposes, something else so that it is not dealt with by business people as the thing which it originally was—if it is so changed in its nature by the perils of the sea as to become an unmerchantable thing which no buyer and no honest seller would sell—then there is a total loss” (*per* Esher M.R., *Asfar v. Blundell* [1896] 1 Q.B. 127).

(2) As to what words will entitle a tenant for life to enjoy wasting or onerous assets “in specie,” so as to displace the rule in *Howe v. Dartmouth* (7 Ves. 137; 1 White & Tudor (9th ed.) 60, 68), see POSTPONE; PRODUCE; PROFITS; RENTS; see also *Collins v. Collins* 2 My. & K. 703; *Pickering v. Pickering* 8 L.J. Ch. 336; *Holgate v. Jennings* 24 Bea. 623; *Fearn v. Young* 9 Ves. 549, and *Kirkman v. Booth* 18 L.J. Ch. 25, cited and stated by Buckley J., *Stanier v. Hodgkinson* 73 L.J. Ch. 179; see also 2 Jarm. (8th ed.) 1225 *et seq.*; Law of Property Act 1925 (c. 20), s.28; *Re Brooker* [1926] W.N. 93.

SPECIES. Stat. Def., Animal Health Act 1981 (c. 22), s.21.

SPECIFIC. (1) “Specific . . . benefits” (Restrictive Trade Practices Act 1956 (c. 68), s.21(1)(b)) means explicit and definable (*In Re Net Book Agreement* 1957 [1962] 1 W.L.R. 1347).

(2) (a) “Specific cause” of profits falling short (Income Tax Act 1842 (c. 35), s.100, Sched. D, 3rd set of rules, r. 4): see *Ryhope Co. v. Foyer* 7 Q.B.D. 485.

(b) (Income Tax Act 1918 (c. 40), Sched. D, Rules applicable to Cases I and II, r. 11) in relation to a reduction of profits, included the cessation of a coal strike (*Inland Revenue Commissioners v. Anderson* [1931], 48 T.L.R. 126); but not ordinary fluctuations of trade (*Fiat (England) v. Williams* 17 Tax Cas. 105). See also *Elliott v. Duchess Mills Ltd.* [1927] 1 K.B. 182.

(3) “Specific charge”: see *Illingworth v. Houldsworth* [1904] A.C. 355, cited FLOATING SECURITY.

(4) A specific bequest, “in the first place, is a part of the testator’s property. A general bequest may or may not be a part of the testator’s property. A man who gives £100 money or £100 stock may not have either the money or the stock, in which case his executors must raise the money or buy the stock; or he may have money or stock sufficient to discharge the legacy, in which case the executors would probably discharge it out of the actual money or stock. But in the case of a general legacy it has no reference to the actual state of the testator’s property, it being only supposed that the testator has sufficient property which, on being realised, will procure for the legatee that which is given to him; while in the case of a specific bequest it must be of a part of the testator’s property itself. In the next place, it must be a part emphatically, as distinguished from the whole. It must be what has been sometimes called, a severed or distinguished part. It must not be the whole, in the meaning of being the totality of the testator’s property, or the totality of the general residue of his property after having given legacies out of it. But if it satisfy both conditions—that it is (1) a part of the testator’s property itself, and (2) is a part as distinguished from the whole or from the whole of the residue—then it appears to me to satisfy everything that is required to treat it as a specific legacy. I hope the definition which I have attempted to give will be more successful than those which have been attempted before, but I can only express that hope with some degree of trepidation” (*per* Jessel M.R., *Bothamley v. Sherson* L.R. 20 Eq. 308, 309). But a residuary devise is specific in its nature, as regards marshalling assets (*Hensman v. Fryer* 3 Ch. 420), and within LOCKE KING’S ACTS (Real Estate Charges Act 1854

(c. 113), 1867 (c. 69) and 1877 (c. 34)) (*Gibbins v. Eyden* L.R. 7 Eq. 371; *Hannington v. True* 33 Ch. D. 197). See also *Page v. Leapingwell* 18 Ves. 43, on which see *Harley v. Moon* 31 L.J. Ch. 140; *Re Margetts* 50 S.J. 290; MY. CP. SEVERANCE.

(5) "Specific goods" (Sale of Goods Act 1893 (c. 71), s.62(1)) means "goods identified and agreed upon at the time a contract of sale is made." As to haystacks, see *Eldon (Lord) v. Hedley Brothers* [1935] 2 K.B. 1. See also *Re Wait* 96 L.J. Ch. 179; *Kursell v. Timber Operators & Contractors Ltd.* [1927] 1 K.B. 298.

(6) Specific legacy: see *per* Selborne C., *Robertson v. Broadbent* 8 App. Ca. 812; *Re Huddleston* [1894] 3 Ch. 595; *Re Richardson* 86 L.T. 25; INVESTED; SUM; 2 Wms. (13th ed.) 609 *et seq.*; Theobald (10th ed.), 113–119. As to general or specific legacy, see *Re Willcocks* [1921] 2 Ch. 327; *Hawkind v. Shaw* [1922] 2 Ch. 569.

(7) (a) "Specific performance of a contract is its actual execution according to its stipulations and terms; and is contrasted with damages or compensation for the non-execution of the contract" (Fry (6th ed.), s.3). See also Fry, *passim*; 2 White & Tudor (9th ed.), 372 *et seq.*

(b) Specific performance of a building contract will be ordered where damages are not an adequate remedy, the works are sufficiently defined, and the defendant owns or otherwise has the right to enter on the land on which the work is to be done (*Carpenters Estates Ltd. v. Davies* [1940] Ch. 160).

(c) As to the making of an order for specific performance in the county court, see *Bourne v. McDonald* [1950] 2 K.B. 422.

(8) "Specific purpose": see *Tek v. Hoor Neoh* [1922] 1 A.C. 120.

(9) A resolution passed by an association of motor-vehicle finance houses, that members should not supply vehicles save on or subject to terms and conditions providing for an indemnity from the dealer, was a "specific" recommendation within s.6(7) of the Restrictive Trade Practices Act 1956 (c. 68) (*Re Finance Houses Association's Agreement* [1965] 1 W.L.R. 1419), as also was a recommendation by National Federation of Retail Newsagents to its members that they should impose a boycott on the Daily Mirror (*Re National Federation of Retail Newsagents, etc. Agreement (No. 3)* [1969] 1 W.L.R. 875).

(10) A "specific sum," charged by settlement on realty and exempt from legacy duty by the proviso to Legacy Duty Act 1805 (c. 28), s.4, was not confined to a precise amount fixed by the settlement, but included an amount named by the settlement which might be reduced by the donee of a power thereunder, *e.g.* a power to appoint a rent-charge not exceeding £700 a year (*A.-G v. Hertford* 14 L.J. Ex. 266; *Pickard v. A.-G.* 9 L.J. Ex. 329).

Specific trust: see PARTICULAR TRUST.

(11) "Specific wish": see *Re Atkinson* 80 L.J. Ch. 370, cited PRECATORY TRUST.

(12) "Specifics," *i.e.* medicines: see *Farmer v. Glyn-Jones* [1903] 2 K.B. 6, cited PROPRIETOR.

See SPECIFY.

SPECIFICALLY. (1) A mortgage or charge "specifically affecting" the property of a joint stock company (Companies Act 1862 (c. 89), s.43; see Companies Act 1948 (c. 38), s.104) means one created by the company itself (*Re General Horticultural Co.* 29 S.J. 555).

"Specifically bequeathed": see BEQUEATHED, and SPECIFIC, para. (4).

(2) The statute establishing poor rates (Poor Relief Act 1601 (c. 2)) imposed no liability on any mines, except coal mines (*Morgan v. Crawshay* L.R. 5 H.L. 304). The Rating Act 1874 (c. 54), s.3, made all mines assessable to the poor rate; but, by s.8, a lessee, till then exempt from being rated, became during the continuance of

his lease entitled to deduct from his rent one-half of the rate unless he had “specifically contracted to pay such rate in the event of the abolition of the said exemption.” A lessee of an iron mine who became liable to poor rate under that latter Act, and who before its passing had contracted to pay his rent “free from all deductions whatsoever,” and also to pay “all manner of taxes, rates, assessments, charges, and impositions whatsoever, parliamentary or parochial, which now are or shall at any time hereafter” be payable in respect of the mine, was held not to have “specifically” contracted himself out of the benefit of s.8 (*Chaloner v. Bolckow* 3 App. C. 933; *Devonshire v. Barrow Haematite Steel Co.* 2 Q.B.D. 286; see IMPOSITION). “The meaning of the word ‘specific’ is the reverse of ‘general.’ You cannot give to a general covenant the force of a specific agreement with regard to a particular tax; and a covenant in a lease to pay ‘all taxes, rates, assessments, charges and impositions whatsoever’ cannot be regarded as a ‘specific’ covenant” (*per* Lord Hatherley *Chaloner v. Bolckow* *sup.*).

(3) To deny “specifically” a statement in a pleading (R.S.C., Ord. 19, r. 13, now Ord. 18, r. 13(3)). See thereon *Thorpe v. Holdsworth* 3 Ch. D. 637; *Harris v. Gamble* 7 Ch. D. 877; *Adkins v. North Metropolitan Tramways* 63 L.J.Q.B. 361; Ann. Pr.; *cp.* NEGATIVE PREGNANT.

(4) The words “household furniture and effects, implements of husbandry,” in a schedule to a bill of sale, do not “specifically” describe such goods within Bills of Sale Act 1882 (c. 43), s.4; for the word requires “that amount of separation of one class of articles from another which any business inventory would give” (*per* Brett M.R., *Roberts v. Roberts* 13 Q.B.D. 794). So, a bill of sale, by a picture dealer, stating pictures as being so many—*e.g.* 300 oil pictures in gilt frames, 20 water-colour pictures—would be insufficient (*Witt v. Banner* 20 Q.B.D. 114). But in a bill of sale by a private person, “12 oil paintings in gilt frames” was held sufficiently specific (*Cooper v. Huggins* 34 S.J. 96). Ordinary cows are not specifically described as “21 milch cows” if nothing more be added (*Carpenter v. Deen* 23 Q.B.D. 566); but in that case Lopes L.J. (who dissented from the decision), said that sheep should be more definitely described, and that horses are customarily described by their colour, *e.g.* “bay mare,” “chestnut gelding.” *Carpenter v. Deen* was followed in *Davies v. Jenkins* [1900] 1 Q.B. 133. In the case of a small farm in Wales, a description of “all my farming stock, comprising 4 horses, 5 cows,” and mentioning other animals by number only and defining them in no other way, was held sufficient (*Jones v. Roberts* 34 S.J. 254); in this case the identification was aided by the localising words “all my farming stock” (see hereon *per* Cotton L.J., *Carpenter v. Deen* *sup.*). So, by the words “roan horse, Drummer; brown mare and foal; 3 rade carts,” the chattels were “specifically described” (*Hickley v. Greenwood* 25 Q.B.D. 277). So, where a bill of sale, under the heading “study,” had an item of “1800 volumes of books, as *per* catalogue,” which catalogue was not annexed, it was held that the books were “specifically described” within the section (*Davidson v. Carlton Bank* [1893] 1 Q.B. 82). See also *Seed v. Bradley* [1894] 1 Q.B. 319, cited “Maintenance of the Security,” under MAINTENANCE.

(5) “Specifically devised”: see *Giles v. Melsom* L.R. 6 H.L. 24.

(6) Deck cargo and living animals must be insured specifically: see r. 17, Rules of Construction, Sched. I, Marine Insurance Act 1906 (c. 41). Specifically in that clause means “as such”: see *British & Foreign Marine Insurance Co. v. Gaunt* [1921] 2 A.C. 41.

SPECIFICATION. The specification to accompany an application for the grant of a patent might be either (1) provisional, or (2) complete (Patents, Designs and Trade

Marks Act 1883 (c. 57), s.5); Form B in Sched. 1 to that Act was that of a provisional specification; Form C that of a complete specification. See hereon *per* Halsbury C., *Vickers v. Siddell* 15 App. Ca. 496; *Nuttall v. Hargreaves* [1892] 1 Ch. 23. Cp. Patents Act 1949 (c. 87), ss.3, 4.

See QUANTITY SURVEYOR.

SPECIFIED. (1) Specified age, in Income Tax Act 1918 (c. 40), s.25, meant an age expressed by a definite number of years, and not an age which could be ascertained only by reference to some other occurrence, as, *e.g.* the death of a testatrix: see *White v. Whittaker* 44 T.L.R. 113.

“Specified article”: see ARTICLE.

(2) The partial construction of a soakaway and three trenches, and the construction of a short section of the drive were held to constitute “specified operations” within the meaning of the Town and Country Planning Act 1971 (c. 78) s.43 (*Spackman v. Secretary of State for the Environment* [1977] 1 All E.R. 257).

(3) “Specified period of the year” (Agricultural Holdings Act 1948 (c. 63), s.2(1), includes a period of 364 days (*Reid v. Dawson* [1955] 1 Q.B. 214).

(4) (a) “Specified person,” in definition of PROMISSORY NOTE: see *Storm v. Stirling* 23 L.J.Q.B. 298, cited SECRETARY.

(b) (Essential Work (Building and Civil Engineering) Order, 1942.) In order to specify a person it is not necessary to give his name provided he is unambiguously identified. A class of persons may be identified by some common characteristic. It is not necessary to name their type of work (*McMorran v. Morrison (Contractors)* [1944] 2 All E.R. 448).

(5) To suspend an order until a bankrupt has paid 15s. in the £ is to suspend it for an indeterminate time, not for a “specified time” within the meaning of Bankruptcy Act 1914 (c. 59), s.26(2); see *Re Kitner* [1921] 3 K.B. 93.

(6) Specified trade: see *Skinner v. Breach* [1927] 2 K.B. 220.

“Specified in the order”, see PARTICULAR.

See SET FORTH.

SPECIFY. (1) A marine policy issued by an association and signed by A. B., manager, “*per* procuration of the several members of the association every member bearing his equal proportion according to the sums mutually insured therein,” and which did not by itself afford the means of ascertaining who the insurers were to be, did not “specify” the names of the subscribers or underwriters within the meaning of Customs and Inland Revenue Act 1867 (c. 23), s.7 (*Re Arthur Average Association* 10 Ch. 542; see thereon *Smith v. Anderson* 15 Ch. D. 247). See Stamp Act 1891 (c. 39), s.93. But as regards the Stamps Act 1795 (c. 63), s.2, the language of which was employed in Customs and Inland Revenue Act 1867 (c. 23), s.7, it was held that if the insurers constituted a firm, the name of the firm would be a sufficient specification of the subscribers (*Reid v. Allan* 4 Ex. 326; *Dowdall v. Allan* 19 L.J.Q.B. 41; referring to which cases it has been said, “it may easily be held that a partnership name is a sufficient specification” (*per* James L.J., *Re Arthur Average Association* 44 L.J. Ch. 576)).

(2) Order by Railway Commissioners requiring a railway or canal company to “specify the nature and detail of such other expenses” (Regulation of Railways Act 1873 (c. 48), s.14) see NATURE.

(3) “Notice specifying particular breach” (Conveyancing Act 1881 (c. 41), s.14—see Law of Property Act 1925 (c. 20), s.146(i)): see NOTICE.

(4) “Specifies the acts or omissions” (Truck Act 1896 (c. 44), s.1(1)(b)): see *Squire v. Bayer* [1901] 2 K.B. 299, cited **GOOD ORDER**.

(5) (a) Where a company agreed to sell its undertaking and a part of the bargain was that the directors and secretary should receive from the purchaser compensation for loss of office, and the notice to shareholders of a meeting to sanction the agreement referred to the agreement simply as “an agreement for the sale of the undertaking and assets,” the notice did not sufficiently “specify the purpose for which the meeting is called” (Companies Clauses Consolidation Act 1845 (c. 16), s.71), even though it was followed by a circular which stated that “the directors and secretary have agreed to retire on being paid a lump sum as compensation for their loss of office” (*Kaye v. Croydon Tramways Co.* [1898] 1 Ch. 358).

(b) The notice “specifying the intention to propose” a special resolution, under Companies Act 1862 (c. 89), s.51—see Companies Act 1948 (c. 38), s.141—(*Re Teede & Bishop* 70 L.J. Ch. 409; *MacConnell v. Prill* [1916] 2 Ch. 57; *Torbock v. Westbury* [1902] 2 Ch. 871, distinguishing *Kaye v. Croydon Tramways Co.* sup.), must fairly state the nature and object of the resolution, so that it may be “intelligible to the minds of the class of men to whom the notice is addressed” (*per* Chitty J., *Henderson v. Bank of Australasia* 45 Ch. D. 330). See hereon *Re Bridport Old Brewery Co.* 2 Ch. 191; *Re Silkstone Fall Co.* 1 Ch. D. 38; *Imperial Bank of China v. Bank of Hindustan* 6 Eq. 91.

(6) (a) “Specify the grounds.” Where the articles of a company authorised the directors to refuse to register a transfer made by a member who had any of certain objectionable qualifications there referred to, and provided that they should not be required to “specify the grounds” of their refusal, “grounds” was held to refer to the qualification on the ground of which the refusal was made, and not merely “reasons” (*Berry and Stewart v. Tottenham Hotspur Football and Athletic Co. Ltd.* [1935] Ch. 718).

(b) “Specifying the grounds of objection”: see *Redheugh v. Gateshead* [1924] 1 K.B. 369, reversed [1925] A.C. 309.

(c) “Specify the grounds on which the proposed amendment is supported” (Rating and Valuation Act 1925 (c. 90), s.37(2)): see *R v. Winchester Area Assessment Committee, Ex p. Wright* [1948] 2 K.B. 455.

See **SPECIFIC**.

SPECIMEN. “Specimen for a laboratory test” (Road Traffic Act 1972 (c. 20), s.9). For a specimen of urine to be a “specimen” within the meaning of this section, it must be of sufficient quantity to be divisible into two parts, and each part must be sufficient to be capable of analysis (*R. v. Coward* [1976] R.T.R. 425). See also **FAIL**.

SPECULATION. “‘Speculation’ is a word of very indefinite meaning. There is legitimate and illegitimate speculation” (*per* Lord M'Laren, *A. B. v. C. D.* 42 Sc. L.R. 37). See **RASH AND HAZARDOUS**.

SPEED. See **CONVENIENT SPEED**; **MODERATE SPEED**.

See *Smith v. Boon* 84 L.T. 593, cited **TRAFFIC**. See also **REASONABLE AND PROPER**; **RECKLESS**; **COURSE**.

SPEND. “Does not spend”: see **LEFT**.

See **EXPEND**.

SPENT. As to when an agreement between employers and a workman was "spent," see *Hulmston v. Birkenhead Union* 95 L.J.K.B. 529.

SPENT MADDER. See *Turner v. Mucklow* 6 L.T. 690.

SPES SUCCESSIONIS. See *Re Parsons* 45 Ch. D. 51, cited CONTINGENT; EXPECTANT HEIR; *Re Wyllie* 28 Sc. L.R. 855, and *Morison v. Reid* 30 Sc. L.R. 477, cited PROPERTY; *Re Simpson* [1904] 1 Ch. 1, cited SETTLE; *Re Ellenborough* [1903] 1 Ch. 697; *Obers v. Paton's Trustees* 34 Sc. L.R. 538. A *spes successionis* is only a hope to succeed to property, e.g. as heir-at-law or next-of-kin, it is not a title to property (*per* Warrington J. in *Re Green* 55 S.J. 552, citing and applying *Re Parsons* sup.). See EXPECTANCY.

SPINSTER. (1) " 'Spinster' is the addition usually given to all unmarried women from the viscount's daughter downward" (Cowel).

(2) A bequest for "spinsters" is charitable (*Thompson v. Corby* 27 Bea. 649). But see *Boyce v. Wasborough* [1921] 1 A.C. 425. Cp. WIDOW.

(3) Following, and a little amplifying, the rule on the phrase without having been married, Romer J., held that an ultimate trust, in a marriage settlement, on the wife's next-of-kin as if she had died "a spinster and intestate," excluded only the husband, and that her child by a former marriage was entitled (*Re Forbes* [1899] W.N. 6).

See FEME; UNMARRIED.

SPIRIT. "Spirit of the gift" (Charities Act 1960 (c. 58), s.13(1)), see *Lepton's Charity* [1972] Ch. 276).

SPIRIT MERCHANT. See MERCHANT.

SPIRITS. (1) "We think that nothing can be taken to be 'spirits' within the meaning of Duties on Spirits Act 1825 (c. 80) (see s.101), which does not come under the definition of an inflammable liquid produced by distillation, either pure or mixed only with ingredients which do not convert it into some article of commerce not known in common parlance under the generic appellation of 'spirits' " (*per* Pollock C.B., delivering the judgment, *A.-G. v. Bailey* 1 Ex. 281). It was there also said that Duties on Spirits Act 1836 (c. 72), and Duties on Spirits Act 1842 (c. 25), were strongly confirmatory of this view; and it was held that sweet spirits of nitre were not "spirits" within the enactment.

(2) Stat. Def., Inland Revenue Act 1868 (c. 124), s.6; Refreshment Houses Act 1860 (c. 27), s.21; Spirits Act 1880 (c. 24), s.3; Customs and Excise Act 1952 (c. 44), s.307, see also ss.111, 118, 172; Alcoholic Liquor Duties Act 1979 (c. 4), s.1(2).

See BRITISH SPIRITS; FOREIGN; LOW WINES; PLAIN SPIRITS; SPIRITUOUS LIQUOR; DEALER; RETAIL; RETAILER. Cp. BEER.

SPIRITUAL. (1) "Temporal or spiritual injury, damage, harm or loss" (Corrupt and Illegal Practices Prevention Act 1883 (c. 51), s.2): a priest might "throw the whole weight of his character into the scale; but he may not appeal to the fears, or terrors, or superstition, of those he addresses. He must not hold out hopes of reward here or hereafter, and he must not use threats of temporal injury, or disadvantage, or of punishment hereafter. He must not, e.g. threaten to excommunicate,

or to withhold the Sacraments, or to expose the party to any other religious disability, or denounce the voting for any particular candidate as a sin, or as an offence involving punishment here or hereafter" (*per* Fitzgerald J., *Longford* 2 O'M & H. 16; see also *Tipperary*, *ibid.* 31).

(2) " ' Law spiritual': that is the ecclesiasticall lawes allowed by the lawes of this realm, viz. which are not against the Common Law (whereof the King's prerogative is a principal part), nor against the statutes and customes of the realm: and regularly, according to such ecclesiasticall lawes, the Ordinarie and other ecclesiasticall judges doe proceed in causes within their conusance" (Co. Litt. 344 a). Cp. "Law temporal," under TEMPORAL.

Corporation spiritual: see CORPORATION.

Lord spiritual: see PARLIAMENT; PEER.

See ECCLESIASTICAL PERSON; RELIGION.

SPIRITUALISM. See *Monck v. Hilton* 2 Ex. D. 268, cited PALMISTRY; OTHERWISE.

SPIRITUALITY. "Spiritualities of a bishop, *spiritualia episcopi*, are those profits which he receives as a bishop, not as a baron of the Parliament. Such are the duties of his visitation, his benefit growing from ordaining and instituting priests, presentation money, that is *subsidiium charitativum* which upon reasonable cause he may require of his clergy, and the benefit of his jurisdiction" (Cowel). See also TEMPORALITY.

SPIRITUOUS LIQUOR. (1) A covenant not to use premises "as an inn, public-house, or tap-room, or for the sale of spirituous liquors, or ale, or beer," is broken if such liquors, etc., are sold in any form or manner, *e.g.* in bottles (*Fielden*, or *Feilden v. Slater* L.R. 7 Eq. 523; cp. *Jones v. Bone* L.R. 9 Eq. 674, cited RETAIL). See PUBLIC HOUSE.

(2) A covenant in the lease of a tied public-house that the lessee shall purchase his beverages from the lessor implies, as a condition, that the lessor shall be willing to supply the same of a good marketable kind (*Luker v. Dennis* 7 Ch. D. 227; see also *Doe d. Calvert v. Reid* 8 L.J.O.S.K.B. 328; see *Courage v. Carpenter* [1910] 1 Ch. 262; see also TIED HOUSE). Such a covenant, if made with the lessor "and his assigns," will run with the land (*Clegg v. Hands* 44 Ch. D. 503), even when the assigns of the lessee are not named (*White v. Southend Hotel Co.* [1897] 1 Ch. 767). And where the covenant is to purchase from "the lessor, or his firm, or his or their successors in business," that means what it says, and so long as the lessor can and will supply he is the person entitled to the covenant; failing him, then his "successors in business" are entitled thereto, and you cannot read into the covenant "his executors administrators or assigns" after the word "lessor," although the lease provides that "where the context allows" you may do so, for the context there does not allow the insertion of those words (*Birmingham Breweries v. Jameson* 67 L.J. Ch. 403; see also *Manchester Brewery Co. v. Coombs* [1901] 2 Ch. 608). A similar conclusion will be reached if the intention is clear that the benefit of such a covenant is to go with the business of the covenantee, even though his "successors and assigns" are not mentioned (*John v. Holmes* [1900] 1 Ch. 188, cited ASSIGNS). See also EXCLUSIVE RIGHT.

(3) "Spirituous liquors" in the first part of Sale of Spirits Act 1751 (Tippling Act) (c. 40), s.12 (probably) meant (as it did in the subsequent part of the section) distilled spirituous liquors, so that wine, beer, etc., were not included in the section, but only "spirits" in the popular meaning of that word, *e.g.* brandy, whisky, gin.

The section extended to spirits mixed with water (*Scott v. Gillmore* 3 Taunt. 226; *Gilpin v. Rendle* cited 4 C. & P. 368, 369, n.); but in *Wyatt v. Mackenzie* 44 S.J. 583, 584, Grantham J., divided soda-water from the whisky with which it was mixed, and gave judgment for the value of the soda-water. The section was amended by Sale of Spirits Act 1862 (c. 38) see also INTOXICATING LIQUOR; ITEM; ONE TIME.

SPITTING OF BLOOD. "Spitting of blood," in a life insurance proposal, means spitting of blood from some disease; but if the proposer suffers from spitting of blood, without knowing the cause, the fact should be stated (*Geach v. Ingall* 15 L.J. Ex. 37).

SPITTLE-HOUSE. " 'Spittle-house,' mentioned in the Act for Subsidies (15 Car. 2), c. 9, is a corruption from hospital, and signifies the same thing; or it may be taken from the Teutonick 'spital,' which denotes an hospital or almes-house" (Cowel).

SPLIT. Splitting, or dividing, causes of action: see CAUSE OF ACTION.

Conveyances of realty were void when made "to multiply voices, or to split or divide the interest" "among several persons to enable them to vote at elections" (s.7, Parliamentary Elections Act 1696 (c. 25)); that enactment was "merely declaratory of the common law, and avoids such conveyances only as are actually tainted with fraud" (1 Rogers, 226, which see for cases supporting that proposition).

SPOIL. "Without impeachment of waste, except spoil or destruction"; as to the force of this exception, see *per Romilly M.R., Vincent v. Spicer* 25 L.J. Ch. 591.

See WILFUL AND MALICIOUS. Cp. BOOTY; PRIZE.

SPOLIATION. "Spoliation is an injury done by one clerk or incumbent to another, in taking the fruits of his benefice without any right thereunto, but under a pretended title" (3 B1. Com. 90).

SPONTE. See WILLINGLY.

SPORTING. See HUNTING.

(1) A "right of sporting" (Rating Act 1874 (c. 54), s.6(1)) was a "right of fowling, or of shooting, or of taking or killing game or rabbits, or of fishing," and was rateable under ss.3(2), 6, *i.e.* "when severed from the occupation of the land," on the full value of the right; it was not assessable to only one-fourth of that value on the ground that it was "land used as arable, meadow, or pasture, ground only," within Public Health Act 1875 (c. 55), s.211(1)(b) (*Alton v. Spicer* [1904] 1 K.B. 678).

(2) A "sporting paper or periodical," in a restrictive agreement, did not include one devoted to athletic sports and which deliberately excluded all racing and betting intelligence, *e.g.* the *Athletic News* (*McFarlane v. Hulton* [1899] 1 Ch. 88, cited PUBLICATION).

(3) "Sporting purposes" (Firearms Act 1937 (c. 12), s.4(7), now Firearms Act 1968 (c. 27), s.11(1)). Shooting rats is not shooting for "sporting purposes" within the subsection (*Morton v. Chaney; Same v. Christopher* [1960] 1 W.L.R. 1312).

"Sporting rights." Stat. Def., Income and Corporation Taxes Act 1970 (c. 10), s.75(4).

SPORTS. “Sports ground”; “sports stadium.” Stat. Def., Safety of Sports Grounds Act 1975 (c. 52), s.17.

SPOUSE. Stat. Def., Housing Finance Act 1972 (c. 47), Sched. 3, para. 2; Capital Gains Tax Act 1979 (c. 14), ss.136, 155(2).

SPRAG. See MATERIALS.

SPREAD. The accidental fall of part of a load from a lorry did not amount to the “spreading of material” within the terms of a clause in an insurance policy (*Salmon Contractors v. Monksfield* [1970] 1 Lloyd’s Rep. 387).

SPRING. (1) “What is a spring (of water)? Is it where a defined channel of water first starts?” (*per* Herschell C., *Bradford v. Pickles* 64 L.J. Ch. 102). “A ‘spring of water,’ both in law and ordinary language, is a definite source of water. When we talk of a spring of water we mean a source of water of a definite, or nearly definite, area. The word ‘spring’ comes from the water springing or bubbling up. It may be an underground spring which supplies a well, and we say that water ‘wells up.’ It may be above the ground, *e.g.* the ordinary spring from which a small stream or rivulet runs. But those are definite things. A spring of water means a source of water of a definite and well-marked extent existing in nature” (*per* Jessel M.R., *Taylor v. St. Helen’s* 6 Ch. D. 264, cited WATERCOURSE). See also STREAM; cp. PUBLIC WELL.

(2) Land, the value of which was improved by a spring, was rateable to the poor rate at such improved value (*R. v. New River Co.* 1 M. & S. 503).

SPRINGING. (1) Executory limitations of realty in a will are called “executory devises”—in a deed they are called “springing or shifting uses” (Challis, R.P. (3rd ed.) 174). “Phrases which properly refer to the mode of their limitation are, in practice, often confused or used interchangeably with phrases which properly refer to the nature of the interest taken under such limitations. This usage is especially frequent with respect to executory devises, *e.g.* an executory interest arising by executory devise, is often briefly styled an ‘executory devise’ ” (*ibid.*). A “springing use” is an estate in realty which arises, by its own vigour, on the happening of an event or series of events, and which takes unto itself the legal estate in the realty by virtue of the Statute of Uses 27 Hen. 8, c. 10.

(2) “In *Cadell v. Palmer* (1 Cl. & F. 372), the House of Lords settled the question of the extent to which executory limitations and shifting uses could be lawfully carried” (*per* Farwell J., *Re Ashforth* [1905] 1 Ch. 543); see hereon *per* Parker J., *White v. Summers* [1908] 2 Ch. 256; see also Conveyancing Act 1882 (c. 49), s.10). See Law of Property Act 1925 (c. 20), ss.1, 4, 39, and Sched. 1.

(3) “No limitation shall be construed as an executory or shifting use which can, by possibility, take effect by way of remainder” (*per* Farwell J., *Re Ashforth* *sup.*, citing *Purefoy v. Rogers* 2 Saund. 380. 388, n. 9).

See “Contingent Remainder,” under CONTINGENT.

SPRING-RICE’S ACT. Executors Act 1830 (11 Geo. 4 and 1 Will. 4, c. 40).

SQUARE. Glass Duties Act 1787 (c. 28), s.5, imposed a duty on all cast-plate glass which was to be “squared into plates of a superficies not less than 1485 inches”; whereon Eyre C.B. (*A.-G. v. Cast-Plate Glass Co.* 1 Anstr. 44), said, “I have no

doubt in saying that the legislature used the word 'square' not in the strict, but in the common acceptation, confining it to rectangular, but not to equilateral, figures." Cp. SQUARE MILE.

Stat. Def., London Building Act 1930 (20 & 21 Geo. 5, c. clviii), s.5.

See HOLLOW SQUARE; STREET.

SQUATTER. (1) A squatter, in unsettled lands of a colony, means "a person who has taken possession of a piece of land and occupied it by buildings or by cultivation, and has, by so taking possession of it, asserted a right to it" (*Hoggan v. Esquimalt & Nanaimo Railway* [1894] A.C. 429). *Semble*, "settler" is synonymous (*ibid.*).

(2) Sometimes an intruder on land in England, and who acquires a possessory title thereto, is called a squatter (*Re Nesbitt and Potts* 74 L.J. Ch. 310).

STAB. See CUT; WOUND. Cp. SLIT.

STABLE. (1) *Semble*, a "stable" is a place for horse; a cow-house is not a "stable" (*R. v. Haughton* 5 C. & P. 559, cited OUTHOUSE); nor is a lumbershed, though originally built for and used as a stable (*R. v. Colley* 2 Moo. & R. 475).

(2) Training stables: see *Lambton v. Kerr* [1899] 2 Q.B. 233, cited BELONGING; SOLELY.

(3) "Stable" belonging to a specified house: see *Maitland v. Mackinnon* 32 L.J. Ex. 49, cited BELONGING.

Stables, as part of a dwelling-house, for purposes of house tax: see BELONGING.

See MANSION; NUISANCE; WORKPLACE.

STABLESTAND. " 'Stablestand' is a terme of the forrest lawes, and it is when one is found standing in the forest with his bow bent, ready to shoot at any deere, or with his greyhounds in a lease ready to slip" (*Termes de la Ley*, citing *Manwood*, 133 b). See also Cowel.

STACK. Stack of hay: see COCK OF HAY.

(1) A quantity of straw packed on a lorry, in course of transmission to market, and left for the night in the yard of an inn, was not a "stack of straw" within "stack of corn, grain, pulse, tares, hay, straw, haulm, stubble" (*Malicious Damage Act* 1861 (c. 97), s.17) (*R. v. Satchwell* L.R. 2 C.C.R. 21).

(2) A score of faggots piled one upon another in a loft was not a "stack of wood" within *Malicious Injuries to Property Act* 1827 (c. 30), s.17 (see *Malicious Damage Act* 1861 (c. 97), s.17) (*R. v. Aris* 6 C. & P. 348).

STADIUM. "By the grant of *Stadium*, *Ferlingus*, or *Quarentena terræ*, doth pass a furlong or furrow long, which anciently was the 8th part of a mile" (*Touch.* 96: see also *Co. Litt.* 5 b). "And *de ferlingis et quarentenis* you shall read divers times in the books of *Domesday*" (*Co. Litt.* 5 b).

See QUARENTINE.

STAFF. See PERMANENT.

STAGE. See ENTERTAINMENT.

(1) Where a court, judge, or arbitrator has the power, *e.g.* to amend, strike out, refer, state a case, etc., "at any stage of the proceedings" (*R.S.C.*, old Ord. 15).

r. 6), the power applies so long as anything remains to be done to complete the judgment or award, *e.g.* the assessment of damages after judgment determining the liability (*The Duke of Buccleuch* [1892] P. 201; *per* Halsbury C., *Tabernacle Building Society v. Knight* [1892] A.C. 298). But where the proceedings are complete, *e.g.* when the award has been made in an arbitration, the power is gone (*Re Palmer and Hosken* [1898] 1 Q.B. 131). Cp. PENDING.

(2) Every culprit and his or her wife or husband was “a competent witness for the defence at every stage of the proceedings” (Criminal Evidence Act 1898 (c. 36), s.1), *i.e.* at every stage where a denial might be pleaded; therefore, a culprit could not be sworn and give evidence before the grand jury (*R. v. Rhodes* [1899] 1 Q.B. 77), nor, *semble*, in indictable cases, before the committing justices (*per* Hawkins J., *Anon.* 43 S.J. 36).

(3) Goods remained in “a stage, process or progress, of manufacture” (Malicious Injuries to Property Act 1827 (c. 30), s.3) if they were not brought into a condition fit for sale, although their texture was complete (*R. v. Woodhead* 1 Moo. & R. 549).

STAGE CARRIAGE. (1) (Stage Carriages Act 1832 (c. 120), s.48). “There is no doubt that a vehicle which proceeds from stage to stage at regular, or more or less regular, intervals, and carries passengers who pay separate fares, is a stage coach or a stage carriage, whichever expression is preferred” (*per* Lord Goddard C.J., in *Chapman v. Kirke* [1948] 2 K.B. 450, 454).

(2) A tramway car was a stage carriage, within the Glasgow Police Act 1866 (c. cclxxiii) (*Black v. Neilson* 35 Sc. L.R. 258), and so was a motor omnibus (*Dennis v. Mike* [1924] 2 K.B. 399).

(3) “Stage carriage service” (Public Passenger Vehicles Act 1981 (c. 14), s.30(1)). Services twice daily in either direction between London, Luton and Gatwick airports, offering door-to-door service available on demand were held to be “stage carriage services” within the meaning of this section, notwithstanding that no exact route could be specified (*R. v. Traffic Commissioners for the Metropolitan Traffic Area, ex p. Licensed Taxi Drivers' Association* [1984] R.T.R. 197).

Stat. Def., Transport Act 1980 (c. 34), s.3; Public Passenger Vehicles Act 1981 (c. 14), s.2.

See also METROPOLITAN; HACKNEY CARRIAGE; OMNIBUS; CAB; STAGE WAGGON.

STAGE PLAY. In Theatres Act 1843 (c. 68), s.23, “stage play” included “every tragedy, comedy, farce, opera, burletta, interlude, melodrama, pantomime, or other entertainment of the stage, or any part thereof; provided always that nothing herein contained shall be construed to apply to any theatrical representation in any booth or show which, by the justices of the peace or other persons having authority in that behalf, shall be allowed in any lawful fair, feast, or customary meeting of the like kind.” A duologue was within that definition (*Thorne v. Colson* 25 J.P. 101). Dancers descending from rocks on to the stage with daggers in their hands and dancing in mimic warfare, the conclusion of the dance being accentuated by some of the dancers standing in triumph over the others, and who returned at the approach of a new set of dancers with palm leaves in their hands, the latter making an avenue to receive a première danseuse who danced a *pas seul*, and then all formed a group with palm leaves and other stage properties was, *semble*, a “stage play”; but whether such, or any such like, performance was or was not a stage play was rather a question of fact than of law (*Wigan v. Strange* L.R. 1 C.P. 175). See hereon *Gray v. The Oxford* 21 T.L.R. 664. See DRAMATIC.

Stat. Def., Finance Act 1935 (c. 24), s.1(4).

STAGE WAGGON. By a Local Turnpike Act persons who had paid any toll for the passing of any horse and carriage through a toll-gate, were exempt from paying toll again that day, but it was provided that the tolls payable in respect of horses drawing any "stage-coach, diligence, van, caravan, stage-waggon, or other stage-carriage," should pay on re-passing; held, that "stage waggon" signified a waggon that went and returned regularly from a fixed place to some other fixed place, at certain definite times (*R. v. Ruscoe* 7 L.J.M.C. 94).

See STAGE CARRIAGE.

STAGNUM. See POOL; GURGES.

STAIRCASE. "Staircase" (Factories Act 1937 (c. 67), s.25(2), Factories Act 1961 (c. 34), s.28(2)). Three steel steps wedged into a platform just over three feet high do not constitute a "staircase" for the purposes of these sections (*Kimpton v. Steel Co. of Wales* [1960] 1 W.L.R. 527).

STALE. Stale demand: see *Re Sharpe* [1892] 1 Ch. 154, and cases there cited; WAIVER

STALL. (1) The continuous occupation of a portion of a market by an erection placed there for the purpose of selling goods, is a "stall" for which stallage is payable although the soil be not interfered with; therefore, a wooden or wicker basket (called in Norfolk a "ped"), having a lid which turns back, and which, when supported by a stool or pieces of wood not fixed in the soil, forms a table upon which goods are exposed for sale, is a "stall" (*Great Yarmouth v. Groom* 32 L.J. Ex. 74). See also *Caswell v. Cook* 11 C.B.N.S. 637.

(2) A mobile snack bar capable of being separated from its towing van, and stationed for a substantial time in the layby of a highway for the purpose of doing business there, was held to be a "stall" "pitched" on the highway within the meaning of s.127(c) of the Highway Act 1959 (c. 25) (*Waltham Forest London Borough Council v. Mills* (1979) 78 L.G.R. 248).

STALLAGE AND PICKAGE. (1) "Stallage, is the right of putting up a stall in a fair or market, and also the money paid to the owner of the soil for so doing; pickage is the right of picking up the soil for that purpose, and the money paid to the owner of the soil for so doing" (Elph. 620, citing Spelm. *Stallagium*; *R. v. Maydenhead* Palm. 76; 2 Rol. Rep. 155; see hereon *Great Yarmouth v. Groom* 32 L.J. Ex. 74, cited STALL). See also *Newcastle v. Worksop* [1902] 2 Ch. 156, cited FAIR OR MARKET TOLLS.

(2) " 'Stallage,' that is to be quit of a certaine custome exacted for the street taken or assigned in faires and markets." " 'Piccage' is the payment of money, or the money payd, for the breaking of the ground to set up booths and standings in faires" (*Termes de la Ley*).

(3) Payments known as stallages or pickages are of a different nature from the franchise or market tolls which were extracted from buyers or, if custom supported the practice, from sellers, and which were only payable in respect of goods actually bought and sold in the market. The common law right of the public was to come into the market or fair to buy and sell goods, and the public had no right to erect stalls or to place their goods on the ground in the market except for a purely tem-

porary purpose. If a seller attempted to appropriate a portion of the ground to his exclusive occupation, he committed a trespass and could be sued by the owner of the soil, unless he obtained the owner's consent, and agreed with him on the payment to be made to him for the privilege or convenience of erecting a stall. This payment was called a "stallage," and if holes were made in the soil for poles or posts it was called a "pickage" (*A.-G. v. Colchester Corporation* [1952] Ch. 586.).

STAMP. (1) In Stamp Acts " 'stamp' means as well a stamp impressed by means of a die as an adhesive stamp" (Stamp Act 1891 (c. 39), s.122; excise labels were included in that definition (Stamp Act 1891, s.23). See also Stamp Duties Management Act 1891 (c. 38), s.27. See also STAMPED; ADHESIVE STAMP; AVAILABLE; EVIDENCE OF A CONTRACT. Cp. MARK.

(2) Forged stamp (Stamp Duties Management Act 1891 (sup.), s.13): *R. v. Lowden* [1914] 1 K.B. 144.

Fictitious stamp: see **LAWFUL EXCUSE**.

Stat. Def., Forgery Act 1913 (3 & 4 Geo. 5, c. 27), s.18; Weights and Measures Act 1963 (c. 31), s.58(1); Trading Stamps Act 1964 (c. 71), s.10.

STAMP DUTY. "Stamp duty" (Charities Procedure Act 1812 (c. 101), s.3). The fee payable by way of impressed stamps on an originating petition under s.1 of this Act was held to be a court fee and not a "stamp duty" remitted by s.3 (*Re Elsie Inglis (London) Memorial Fund* [1954] 1 W.L.R. 407).

STAMPED. In Stamp Acts, " 'stamped,' with reference to instruments and material, applies as well to instruments and material impressed with stamps by means of a die as to instruments and material having adhesive stamps affixed thereto" (Stamp Act 1891 (c. 39), s.122). See also Stamp Duties Management Act 1891 (c. 38), s.27 see also **STAMP**.

"Duly stamped": see **DULY**.

"Properly stamped": see **PROPERLY**.

STAND. (1) "Standing in my name" marks a bequest as specific (*Gordon v. Duff* 4 L.T. 598); or "standing in my name" may enlarge the meaning of the word "securities" (*Re Johnson* 89 L.T. 84, cited **SECURITY FOR MONEY**). See also *Re Mayne* [1914] 2 Ch. 115.

(2) Valuation of a partner's share as the same "stood" at a stated date: held to mean as it stood in the books of the partnership (*Blissett v. Daniell* 10 Hare, 511).

(3) Hackney carriage "used in standing or plying for hire": see *Hawkins v. Edwards* [1901] 2 K.B. 169, cited **HACKNEY CARRIAGE**.

(4) Title "as it stands": see *Carter v. Lornie* 28 Sc. L.R. 177, cited **INVESTIGATING**.

(5) "Stands for the time being limited to or in trust for any persons by way of succession" in Settled Land Act 1882 (c. 38), s.2(1): see *Re Trafford's Settled Estates* [1915] 1 Ch. 9. See Settled Land Act 1925 (c. 18), s.1: *Re Carnarvon's Settled Estates* [1927] 1 Ch. 138.

(6) "Stand on the highway so as to cause any unnecessary obstruction thereof," as regards Art. IV, Motor Cars Order, 1904, see *Carpenter v. Fox* [1929] 2 K.B. 458.

(7) "Standing" (London Hackney Carriage Act 1831 (c. 22), s.35) means something akin to waiting or parking and does not merely mean being stationary (*Eldridge v. British Airports Authority* [1970] 2 Q.B. 387).

Machinery, etc., "standing" on premises: see **ERECTED**.

“Standing NETS”: see STOP.

“Standing orders”: see ORDER.

Cargo “as it stands”: see AS IT STANDS.

“Standing to the credit”: see CREDIT.

Shares “standing in his own right”: see IN HIS OWN RIGHT.

See STANDING BY.

STANDARD. (1) “ ‘Estandard or standard’ signifieth an ensigne in war; but it is also used for the principall or standing measure of the King” (Termes de la Ley, *Estandard*); see also Cowel. Cp. BANNER.

(2) “Standard,” as applied to goods, is a common English word with no very precise or definite meaning, but it is generally intended to convey the notion that the goods in connection with which it is used are of high class, or superior quality or acknowledged merit; though registered, it was not a valid trade mark within the Canadian Trade Mark and Design Act 1879: see *Standard Ideal Co. v. Standard Sanitary Manufacturing Co.* [1911] A.C. 78. See also *British & Mexican Shipping Co. v. Lockett* [1911] 1 K.B. 264, cited WORKING DAYS.

(3) “Standard of remuneration” (National Insurance (Industrial Injuries) Act 1965 (c. 52), s.14(6)). The comparison for the purposes of this section should be between the level of remuneration which the applicant would have received in his regular occupation in a normal working week, and the level of remuneration which he is now capable of receiving in a normal working week since his injury (*R. v. National Insurance Commissioner, ex p. Mellors* [1971] 2 Q.B. 401).

(4) “Standard amenities.” This phrase in the Housing Act 1974 (c. 44) refers to the amenities exclusively available to each dwelling and not to shared amenities; so that two flats which shared one bathroom and water closet were not equipped with the “standard amenities” (*F.F.F. Estates v. Hackney London Borough Council* [1980] 3 W.L.R. 909). Stat. Def., Housing Act 1964 (c. 56), s.43(1).

See MEASURE.

STANDELL. “Is a young store oak-tree, which may in time make timber” (Cowel); this is correct “if the word ‘oak’ is expunged” (note to *Herring v. St. Paul’s* 3 Swanst. 514, where it is said that “as increasing the ‘store’ of timber, a standell is denominated a ‘storer’ ”).

STANDING BY. “Standing by” is that acquiescence in an infringement of a right which would make it fraudulent in the possessor of the right to afterwards set up his right; and, firstly the infringer must have made a mistake as to his legal rights; secondly, he must have expended some money or have done some act (not necessarily upon the possessor’s land) on the faith of his mistaken belief; thirdly, the possessor of the legal right must know of the existence of his own right which is inconsistent with the right claimed by the infringer; fourthly, the possessor of the legal right must know of the infringer’s mistaken belief of his rights; lastly, the possessor of the legal right must have encouraged the infringer in his expenditure of money or in the other acts which he has done, either directly or by abstaining from asserting his legal right (*per Fry J., Willmott v. Barber* 15 Ch. D. 105, 106; applied in *Civil Service Musical Instrument Association v. Whiteman* 68 L.J. Ch. 484).

See SILENCE; WAIVER.

STANLAWE. See LAW OR LAWE.

STANNARIES. “The Stannaries” of Devon and Cornwall: see Stannaries Act 1869 and 1887 (c. 19); (c. 43).

Stannaries Court abolished by Stannaries Court Abolition Act 1896 (c. 45).

STARBOARD. “Directing course to starboard” (Regulations for Prevention of Collisions at Sea 1897, Art. 28; see now Regulations of 1910, Art. 28): see *The Aberdonian* [1910] P. 225.

START. Start on a voyage: see SAIL.

“Starts work” (Employment Protection (Consolidation) Act 1978 (c. 14), s.151 as substituted by Employment Act 1982 (c. 46), Sched. 2, para. 7(1)) refers to the beginning of employment under the contract of employment and not the day on which it actually commenced, if that is different (*General of the Salvation Army v. Dewsbury* [1984] I.C.R. 498).

STARTING PRICES. Stat. Def., Finance Act 1952 (c. 33), s.4(2); Betting and Gaming Duties Act 1981 (c. 63), s.10.

STATE. (1) Knowledge of the “state and condition of the property sold” does not cover knowledge of rubbish upon the property, but relates to its physical condition (*Cumberland Consolidated Holdings Ltd. v. Ireland* [1946] K.B. 264).

(2) “The State” (Official Secrets Act 1911 (c. 28), s.1(1)) does not mean the Government or the Executive not the individuals inhabiting this island, *i.e.* Great Britain, but rather the country or the realm, or better still as a synonym, the organised community (*Chandler v. D.P.P.* [1962] 3 W.L.R. 694).

(3) The words “necessary to maintain the hereditament in a state to command that rent” in s.2(2) of the Valuation for Rating Act 1953 (c. 42) modified only the immediately preceding words “other expenses if any” and not the earlier words “repairs and insurance.” The word “state” in s.2(3) does not include state of repair (*Wexler v. Playle* [1960] 1 Q.B. 217).

(4) “Any foreign state” (Patents Act 1949 (c. 87), s.24(2)) is not limited to States which are recognised but includes any sufficiently defined area of territory over which a foreign government has effective control (*Re Al-Fin Corporation's Patent* [1970] R.P.C. 70).

Stat. Def., Wills Act 1963 (c. 44), s.6(1); Civil Jurisdiction and Judgments Act 1982 (c. 27), s.31(5).

See STATES; ACT OF STATE; ACTUAL STATE.

STATED ACCOUNT. See SETTLED.

STATED AMOUNT. (1) A direction in a will to pay all rates, taxes and outgoings in respect of a house was held not to be a provision for the payment of a “stated amount,” for (as explained in *Re Bird* inf.) the provision was in substance for the discharge of certain obligations, and was not directed to the payment of any particular sum. A direction to pay, while the testator’s horses and dogs were living, a stated amount weekly for the maintenance of each horse and each dog was held to be a provision for payment of a “stated amount” (*Re Hawkins* [1943] Ch. 67).

(2) A direction that if the income of a fund after deduction of income tax should not reach £500, the trustees were to make up the deficiency out of capital, was held to be a provision for the payment of a “stated amount.” A fluctuating amount which can be definitely ascertained from time to time is within the section (*Re Bird* [1944] Ch. 111). See also PROVISION; VARIED.

(3) The provisions of s.25(1) of the Finance Act 1941 (c. 30) as to the payment of income tax on an annuity of a stated amount given free of tax did not mean that the amount had to be definitely fixed by the provision granting the annuity. The words were satisfied where the amount was described by reference to a formula and ascertainable by means of that formula even though the amount might vary thereby from year to year. Thus, where the income of an annuitant was to be brought up to a certain sum net, the unspecified but ascertainable amount required to do so was the stated amount (*Re Berkeley, Borrer v. Berkeley* [1945] Ch. 107, approved in the House of Lords [1946] A.C. 555, 565, 576, 587; the order was reversed on other grounds). See also *Re Pointer* [1946] Ch. 324 (order for weekly payments under the Inheritance (Family Provision) Act 1938 (c. 45), s.1).

(4) A direction in a will to pay to a beneficiary the income of a trust fund, subject to a proviso that if such income after deduction of income tax thereon exceeded £500 the surplus was to be held on discretionary trusts, was held to be a provision for the payment of a stated amount (*Re Lyons, Lyons v. Lyons* 114 L.J. Ch. 324).

See also *Re Banbury* [1951] Ch. 1, cited PAYMENT.

STATED PERIOD. See PERIODICAL; CERTAIN TIME.

STATELESS. See NATIONALITY.

STATEMENT. (1) “Statements made”; “statements submitted” (Workmen’s Compensation (Medical Referees in England and Wales) Regulations, 1932 reg. 11). “Statements made” means oral statements; “statements submitted” means written statements (*Nicol v. Kincaid & Co.* 26 B.W.C.C. Supp. 68).

(2) The statement required to be made and signed by a liquidating or compounding debtor under the Bankruptcy Act 1869 (c. 62) (see Bankruptcy Act 1914 (c. 59), s.14), meant a full complete and detailed disclosure, not only of the affairs of his own business, but also and to the same extent of any other (even solvent) business in which he may have been a partner (*Ex p. Amor* 21 Ch. D. 594).

(3) The “statement of assets and liabilities” in a declaration of solvency made for the purposes of a voluntary winding up under s.283(2)(b) of the Companies Act 1948 (c. 38), is valid and satisfies the requirements of the section if it can reasonably and fairly be described as such a statement, even if errors are later discovered in it (*De Courcy v. Clement* [1971] Ch. 693).

(4) A “statement” within s.14(1) of the Trade Descriptions Act 1968 (c. 29) is not confined to a statement inducing the entering into of a contract. It may constitute an offence even though the contract has been completed and payment has been made (*Breed v. Cluett* [1970 2 Q.B. 459]). A statement as to the qualifications or experience of a person carrying on a business providing “services” goes to the likely quality of the services, and is therefore a “statement” within the meaning of this section which, if false, will render that person liable to prosecution (*R. v. Breeze* [1973] 1 W.L.R. 994).

(5) A document in the form of a test record produced by a breathalyser apparatus was a “statement” within the meaning of s.10(3)(a) of the Road Traffic Act 1972 (c. 20) as substituted by s.25(3) and Schedule 8 to the Transport Act 1981 (c. 56) (*Gaimster v. Marlow* [1984] 2 W.L.R. 16).

Stat. Def., Criminal Evidence Act 1965 (c. 20), s.1(4); Civil Evidence Act 1968 (c. 64), s.10.

STATEMENT OF CLAIM. See PLEADING.

STATEMENT OF FACT. See **FACT**; **FALSE STATEMENT**.

STATION. (1) A condition on a railway excursion ticket that if “used for any other station than that named, the ticket will be forfeited” means what it says (*Great Northern Railway v. Palmer* [1895] 1 Q.B. 862).

(2) There must be something very exceptional in its circumstances to make a siding a “station” within Regulation of Railways Act 1873 (c. 48), s.14 (*Pelsall Coal Co. v. London & North Western Railway* 7 Ry. & Can. Traffic Ca. 36, which, *semble*, overrules *Harborne Railway v. London & North Western Railway* 2 *ibid.* 169).

(3) “Traffic to and from the stations of each company”: see *Central Wales Railway v. London & North Western Railway* 4 Ry. & Can. Traffic Ca. 101; see also *Gilmour v. North British Railway* 30 Sc. L.R. 450.

(4) “A station means, not a mere building, but a place where the trains are to stop on a railway” (*per* Cotton L.J., in *Re Ruthin, etc. Railway Act* 32 Ch. D. 438).

(5) “Stations of the Cross”: see *Re St. Mark’s* [1898] P. 114.

Polling station: see **POLLING**.

See **COMPETITIVE**; **RAILWAY STATION**.

STATION TO STATION. An ordinary contract (and though not as common carriers) to carry from “station to station,” involves an obligation to unload and deliver at the receiving station, or at least to provide proper appliances for that purpose (*per* Hawkins J., *Royal National Lifeboat Institute v. London & North Western Railway* 3 T.L.R. 601).

STATIONARY. (1) To be “stationary,” within Art. 9 of the Regulations for Preventing Collisions at Sea 1863 (see Regulations of 1910, Art. 9), a fishing vessel must not have more way on than is necessary to keep herself under command whilst attached to her nets. If it is necessary, even for the purpose of rendering her fishing more effective, that she should have more way on, she is not “stationary,” and must carry the lights of a vessel underway (*The Dunelm* 9 P.D. 164; see thereon *The Tweedsdale* 14 P.D. 164, followed in *The Upton Castle* [1906] P. 147). See also *The Edith* Ir. Rep. 10 Eq. 345. Cp. **STRANDING**. A steam trawler with her trawl down, and showing the triplex light, is practically stationary, and has no duty on her to keep out of the way of an approaching sailing vessel or steamer: see *The Grovehurst* [1910] P. 316, approving *The Tweedsdale* *sup.*, and overruling *The Craigelachie* [1909] P. 1.

(2) A person engages in street trading in or from a “stationary position in a street” within s.17 of the London County Council (General Powers) Act 1947 (c. xlvi) when he stopped perambulating with his barrow for the purpose of serving customers (*Southwark Borough Council v. Nightingale* 64 T.L.R. 563).

(3) “Made stationary” (Salmon and Freshwater Fisheries Act 1923 (c. 16), s.92(1)). A net to which anchors were attached to act as a brake or drag was not “made stationary” (*Percival v. Stanton* [1954] 1 W.L.R. 300).

See **FIXED ENGINE**.

STATIONED. “Stationed” (Caravan Sites and Control of Development Act 1960 (c. 62), s.13(a)). Caravans are not “stationed” on an area where one or two of them have casually stopped for a night or more even though there may have been other caravans which have stopped in the vicinity over several years (*Biss v. Smallburgh R.D.C.* [1965] Ch. 335).

STATIONER. What amounts to a breach of covenant not to let premises for the business of a "stationer": see *Brigg v. Thornton* [1904] 1 Ch. 386, cited *LET*, where the words were "artistic and heraldic stationer."

STATUARY. "Statuary" obviously includes a marble bust chiselled by an artist or marble full-length figure; *secus*, of a terra cotta bust which cannot, without averment on the record, be brought within even a trade meaning of "statuary" (*Sutton v. Ciceri* 15 App. Ca. 144).

STATUS. (1) "Alteration in the status" of members of a company (Companies Act 1862 (c. 89), s.131—see Companies Act 1948 (c. 38), s.282): see *Re National Bank of Wales* 66 L.J. Ch. 225; cited *SHARE*.

(2) Status, as regards legitimacy of children: see *CHILD*; *NEXT-OF-KIN*; Legitimacy Act 1926 (c. 60).

(3) "Status is one indivisible whole. If a man alters his status, he alters the whole of it; though his rights under his new status may, in many respects, be similar to those possessed under his old" (*per* Farwell J., *Re Selot* [1902] 1 Ch. 492).

(4) Status of a thing is ascertained once for all by a judgment *in rem*: see *REM*.

STATUTE. Is, in its primary meaning, synonymous with Act of Parliament.

STATUTE MERCHANT. This, as also statute staple, was a form of security for money formerly much in use: see hereon *Termes de la Ley*; Jacob, *Statute*; 2 Bl. Com. 160.

STATUTE OF DISTRIBUTION. (1) 22 & 23 Car. 2, c. 10.

(2) Devise of all testator's realty and personalty to the "person or persons who under the Statute of Distribution of Effects of Intestates would have been entitled thereto" if he had died intestate; held to mean that the law would divide his property for him, and therefore that the realty went to the heir (*Kühne v. Hudson* 39 S.J. 468). Cp. *NEXT OF KIN*.

(3) "Statutes for the distribution of the personal estate of intestates at the death of the settlor." As meaning the (pre-1926) Statutes of Distribution, see *Re Hooper's Settlement* [1943] Ch. 116. Cf. *Re Sutton* [1934] Ch. 209.

(4) The expression "Statutes of Distribution" held not to include Intestates Estates Act 1890 (c. 29): see *Re Morgan* [1920] 1 Ch. 196. See Administration of Estates Act 1925 (c. 23), Sched. 2.

STATUTE OF FRAUDS. 29 Car. 2, c. 3.

STATUTE OF LIMITATIONS. As a statutory defence in the County Court, the Public Authorities Protection Act 1893 (c. 61) is and is sufficiently stated as a Statute of Limitations; see *Gregory v. Torquay* 55 S.J. 582.

Stat. Def., Arbitration Act 1934 (24 & 25 Geo. 5, c. 14), s.16(8).

STATUTE OF USES. 27 Hen. 8, c. 10.

STATUTE STAPLE. See *STATUTE MERCHANT*.

STATUTORY CORPORATION. See *A.-G. v. Manchester* [1906] 1 Ch. 643, cited *CORPORATION*.

STATUTORY DECLARATION. Stat. Def., Interpretation Act 1978 (c. 30), Sched. 1.

STATUTORY DEFENCE. (1) (County Court Rules 1889, Ord. 10, r. 18a; but cp. now County Court Rules 1936, Ord. 9, r. 4 which omits any reference to a “statutory defence”) included a defence based on want of notice under Employers’ Liability Act 1880 (c. 42) (*Conroy v. Peacock* [1897] 2 Q.B. 6); so, of a defence under Sale of Goods Act 1893 (c. 71), s.4 (*Brutton v. Branson* [1898] 2 Q.B. 219); or of a defence under Gaming Act 1892 (c. 9), s.1 (*Willis v. Lovick* [1901] 2 K.B. 195); so, of a defence to a solicitor’s claim that he had not delivered a proper bill (*Lewis v. Burrell* 77 L.T. 626). As to what is a sufficient compliance with the rule, see *Eaton v. Tapley* [1899] 1 Q.B. 953. A statutory defence is one which has its origin only in a statute and the defence of a breach of warranty had not by the passing of the Sale of Goods Act 1893, become a statutory defence within Ord. 10, r. 18: see *Bright v. Rogers* [1917] 1 K.B. 917; *Salter v. Lask* [1924] 1 K.B. 754.

(2) A defence based on Highway Act 1835 (c. 50), s.67: see *Thomas v. Gower Rural Council* [1922] 2 K.B. 76, in which case Swift J., said, “In practice for many years all defences which have their origin in and are based upon statutes have been treated as statutory defences quite apart from any permission contained in the Act to plead the general issue of ‘not guilty by statute.’ ”

See PURSUANCE; PUBLIC DUTY; SUFFICIENT INDICATION.

STATUTORY DUTY. (1) Prima facie a person who has been injured by the breach of a statute has a right to recover damages from the person committing it unless it can be established, by considering the whole of the Act, that no such right was intended to be given (*Monk v. Warbey* [1935] 1 K.B. 75—damages recovered by third party against motorist who was in breach of s.35 of the Road Traffic Act 1930). See also *Gregory v. Ford* [1951] 1 All E.R. 121, where a servant who was negligent when driving his master’s vehicle was entitled to recover from the master indemnity for the damages payable as the master was in breach of the statutory duty of insuring under s.35; and see *Corfield v. Groves* [1950] 1 All E.R. 488.

(2) An action for damages was held not to lie for selling impure milk contrary to the Food and Drugs (Adulteration) Act 1928 (c. 31), s.2, which made it an offence, punishable by fine, to sell any article of food or any drug which was not of the nature, or not of the substance, or not of the quality of the article demanded by the purchaser (*Square v. Model Farm Dairies (Bournemouth) Ltd.* [1939] 2 K.B. 365).

(3) As to “negligence” in the performance of a statutory duty, in the sense of an invasion of rights which is not shown to be necessarily incident to such performance, see *Provender Mills (Winchester) Ltd. v. Southampton County Council* [1940] Ch. 131. And see NEGLIGENCE.

(4) As to contributory negligence by a person injured through breach of statutory duty, (e.g. to fence machinery), see *Caswell v. Powell Duffryn Associated Collieries Ltd.* [1940] A.C. 152; *Lewis v. Denye* [1940] A.C. 921; and as to workman’s carelessness as a defence to a prosecution, *Carey v. Steam Coal Co.* [1938] 1 K.B. 365, cited EXPOSE.

(5) The maxim *volenti non fit injuria* does not apply in cases of breach of statutory duty (*Wheeler v. New Merton Board Mills Ltd.* [1933] 2 K.B. 669).

(6) The Prison Rules, 1933, were directory only; a departure from them did not in itself confer a right of action on a prisoner (*Arbon v. Anderson* [1943] K.B. 252).

(7) “The formulation of a common law duty as a statutory regulation has the formidable effect of subjecting those who infringe it to penal consequences. It also has

the effect in a civil action of depriving the infringer of the benefit of the plea of *volenti non fit injuria*" (*per* Lord Normand in *Alford v. National Coal Board* [1952] 1 T.L.R. 687).

(8) A claim for damages for breach of a statutory duty is a specific common law right not to be confused with a claim for negligence (*see per* Lord Wright, in *London Passenger Transport Board v. Upson* [1949] A.C. 155).

(9) Employers are in breach of the duty imposed upon them by the Coal Mines Act 1911 (c. 50), ss.49, 102, to make the roof and sides of travelling roads secure if they do not do everything reasonably practicable to make them secure: *see Edwards v. National Coal Board* [1949] 1 K.B. 704.

(10) The duties imposed by the Road Transport Lighting Act 1927 (c. 37), are public duties only, and not duties for breach of which an individual can have a cause of action (*Clark v. Brims* [1947] K.B. 497).

(11) As to the duties imposed upon railways in connection with level crossings, *see Knapp v. Railway Executive* [1949] 2 All E.R. 508; *Low v. Railway Executive* 65 T.L.R. 288.

(12) A police officer investigating a crime is performing his "statutory duties" within the meaning of the Borough of Reading (Parking Places for Disabled Drivers) Order 1975, art. 11 (*George v. Garland* [1980] R.T.R. 77).

See also RECEIVER.

STATUTORY FREEHOLD. *See per* Evershed M.R., in *Tithe Redemption Commission v. Runcorn U.D.C.* [1954] Ch. 383.

STATUTORY INSTRUMENTS. Stat. Def., Statutory Instruments Act 1946 (c. 36), s.1(1).

STATUTORY MORTGAGE. Statutory transfer of mortgage: *see Re Beachey* [1904] 1 Ch. 67, cited **BENEFIT**.

STATUTORY OBJECTS. (Trade Union Act 1913 (c. 30), s.1(2)): *see Hardie & Lane Ltd. v. Chilton* [1928] 1 K.B. 663.

STATUTORY POWER. (1) "Statutory power to enforce a right or to satisfy a claim or lien" (Fertilisers and Feeding Stuffs Act 1926 (c. 45), s.24). The power here referred to was the statutory power of sheriffs, bailiffs and others who had statutory duties to perform in protecting the rights of others, but who were not commercially interested in the sale (*G. C. Dobell & Co. v. Barber and Garratt* [1931] 1 K.B. 219).

(2) Statutory powers: *see* **COMPULSORY POWERS**; and as to remedy for damage caused by their exercise, *see St. James Electric Light Co. v. The King* 73 L.J.K.B. 518, and cases there cited; *East Fremantle v. Annois* [1902] A.C. 213; *per* Halsbury C., *Canadian Pacific Railway v. Roy* [1902] A.C. 220, citing Lord Hatherley in *Geddis v. Bann Reservoir Proprietors* 3 App. Ca. 438; but *see Lagan Navigation Co. v. Lambeg, etc. Co.* [1927] A.C. 226; *Brand v. Hammersmith Railway* L.R. 2 Q.B. 223, cited **INJURIOUSLY AFFECTED**; **EXECUTION OF STATUTORY POWERS**; **NUISANCE**. The purposes of land acquired under statutory powers are generally speaking to be adhered to: *see* **COMPULSORY POWERS**. As to the qualified ownership in, and the non-assignability of statutory powers of a quasi-public nature, *see Edinburgh Street Tramways Co. v. Edinburgh* [1894] A.C. 456; *Eccles v. South Lancashire Tramways Co.* [1912] A.C. 465, cited **TRAMWAYS**; *see also* **UNLESS**; *Quebec Railway, etc. Co. v. Vandry* [1920] A.C. 662.

STATUTORY PROVISION. (1) "Statutory provision regulating service of process" (the old R.S.C., Ord. 9, r. 8; but see now Ord. 65, r. 3): see *Logan v. Bank of Scotland* [1904] 2 K.B. 495.

STATUTORY RECEIPT. Statutory receipt by a building society: see *Building Societies Act 1874* (c. 42), s.42, and Sched., on which see *Fourth City Building Society v. Williams* 14 Ch. D. 140; *Robinson v. Trevor* 12 Q.B.D. 423; *Sangster v. Cochrane* 28 Ch. D. 298; *Hosking v. Smith* 13 App. Ca. 582; see also *Crosbie Hill v. Sayer* [1908] 1 Ch. 866. See also *Law of Property Act 1925* (c. 20), s.115.

STATUTORY RULES. See **RULES**.

STATUTORY TENANT. Statutory tenant, within meaning of Increase of Rent and Mortgage Interest (Restrictions) Acts: see *Nunn v. Pelegrini* [1924] 1 K.B. 685; *Turner v. Watts* 44 T.L.R. 105; *Lovibond v. Vincent* 98 L.J.K.B. 402; *Roe v. Russell* 97 L.J.K.B. 290; *Moodie v. Hosegood* [1952] A.C. 61.

Stat. Def., Rent (Agriculture) Act (c. 80), ss.2-5; Rent Act 1977 (c. 42), s.2.

STATUTORY UNDERTAKERS. A company owning taxicabs was not a "statutory undertaker" within s.19(5) of the Finance Act 1937 (c. 54) (*London General Cab Co. v. Inland Revenue Commissioners* [1950] 2 All E.R. 566).

STAUNCH. See **TIGHT**.

STAY. Stay of execution under Bankruptcy Act 1883 (c. 52), s.4(1) (see Bankruptcy Act 1914 (c. 59), s.1): see *Bond v. Capital & Counties Bank* [1911] 2 K.B. 988.

STAY AND TRADE. A policy which covers a ship during "her stay and trade" at a place, means during her stay there for the purposes of trade; and a stay for a purpose unconnected with trade is a deviation (*African Merchants v. British & Foreign Marine Insurance* L.R. 8 Ex. 154). See **DEVIATE**.

STAYED. Bankruptcy notice on final judgment, "execution thereon not having been stayed" (Bankruptcy Act 1914 (4 & 5 Geo. 5, c. 59), s.1), connotes that the creditor must be in a position to issue execution on the judgment (*Re Woodall* 13 Q.B.D. 479, cited **CREDITOR**), which he cannot do pending the trial of an interpleader issue as to goods which have been seized under a *fieri-facias* on the judgment; for execution on the judgment is necessarily "stayed" till that issue is determined (*Re Ford* 18 Q.B.D. 369); *secus* where a *fieri-facias* has been withdrawn in response to a claim made by a stranger to the goods seized (*Re a Debtor* [1902] 2 K.B. 260). See also *Re Lupton* 55 S.J. 717. As to the effect of an agreement to stay, see *Re Smith* [1903] 1 K.B. 33; *Re S.* [1907] 2 K.B. 896.

STEAL. See **THEFT**.

See *Larceny Act 1916* (c. 59), s.1; *Theft Act 1968* (c. 60), ss.1(1), 24(4).

STEAM ENGINE. See **ENGINE**; **ERECT**.

STEAM NAVIGATION. The breakdown of an engine, the disabling of a screw, and things of that kind, are risks of steam navigation (*per Coleridge C.J.*, *Mercantile S.S. Co. v. Tyser* 7 Q.B.D. 73).

STEAMER; STEAMSHIP. (1) In a bill of lading, a steamship or steamer means a SHIP in which the principal motive-power during the voyage is steam. "I am very far from saying that where it is convenient, as it often is, for a steam vessel to use sailing power instead of steam power when the wind happens to be favourable, it is necessary that the vessel should be at all times and under all circumstances propelled by steam; but the meaning of a vessel being a steamship is that the principal motive-power used shall be the power of steam, and not sails" (*per* Cockburn C.J., *Fraser v. Telegraph Construction Co.* L.R. 7 Q.B. 568).

(2) For the meaning in bills of lading of the phrase "steamer shall be entitled to commence discharging immediately after arrival," see *The Coahoma County* [1924] P. 95.

(3) For meaning of the expression "by steamer" in a marine insurance policy, see *Re Traders' & General Insurance Association* [1924] 2 Ch. 187.

"Shipment by steamer": see SHIPMENT.

See PASSENGER STEAMER; SAILING VESSEL; STEAM LAUNCH; STEAM VESSEL.

STEEL. See IRON.

STEER. See CATTLE.

STEERAGE PASSAGE. In Merchant Shipping Act 1894 (c. 60), s.268(4), "'steerage passage' shall include passages of all passengers except cabin passengers": see *Morris v. Howden* [1897] 1 Q.B. 378, cited **PASSAGE BROKER**.

STELL NET. See NET; STOP.

STENT NET. See NET.

STEP. (1) An application to the court by a defendant for an extension of the time for delivering defence is a "step in the proceedings" within Arbitration Act 1889 (c. 49), s.4 (see now Arbitration Act 1950 (c. 27), s.4) (*Ford's Hotel Co. v. Bartlett* [1896] A.C. 1); *secus*, if such time is obtained by consent without any such application (*Chappell v. North* [1891] 2 Q.B. 252; *Brighton Marine Co. v. Woodhouse* [1893] 2 Ch. 486). So, a summons for particulars, or an order for interrogatories, though obtained on a summons by the adversary, is a "step" (*Chappell v. North* *sup.*), so, of attending on the adversary's summons for directions (*County Theatres Co. v. Knowles* [1902] 1 K.B. 480; *Richardson v. Le Maître* [1903] 2 Ch. 222; *Ochs v. Ochs* [1909] 2 Ch. 121): but merely requiring a statement of claim is not a "step" (*Ives v. Willans* [1894] 2 Ch. 478). So, an application to the court for security for costs is a "step" (*Adams v. Cattley* 66 L.T. 687); but merely filing affidavits in answer to a motion for receiver is not (*Zalinoff v. Hammond* [1898] 2 Ch. 92). See also *Armstrong v. Armstrong* [1901] 2 Ir. R. 267; *Re Ainsworth* [1905] 2 K.B. 103, cited **PROCEEDING**. Nor is the filling up of the slip attached to a default summons with the notice of the intention of the person served to defend the proceedings: see *Austin & Whiteley v. Bowley* 108 L.T. 921; see also *Parker, Gaines & Co. v. Turpin* [1918] 1 K.B. 358. The act of the defendant in an action in transferring to counsel's list a summons issued by the plaintiff under the old R.S.C., Ord. 14, was not the taking of a step in the proceedings by the defendant (*Lane v. Herman* [1939] 3 All E.R. 353).

(2) "Step to commence arbitration proceedings" (Arbitration Act 1950 (c. 27), s.27). The presentation of a claim under a charterparty which provided for arbitration was not of itself a "step to commence arbitration proceedings." (*Babanaft*

International Co. v. Avant Petroleum [1982] 3 All E.R. 244). But this case was distinguished in *Jedranska Slobodna Plovidba v. Oleagine SA; The Luka Botić* [1983] 3 All E.R. 602 where it was held that a claim in writing could be such a “step” within the meaning of the section.

(3) (Courts (Emergency Powers) Act 1939 (c. 67), s.1(2)(b); Courts (Emergency Powers) Act 1943 (c. 19), s.1(2)(b)). Taking any steps meant taking an interlocutory step before the action got to the stage when it was set down and was ripe for trial (*Moorgate Estates v. Trower* [1940] Ch. 206).

(4) “Step” in the action (Increase of Rent, etc. (War Restrictions) Act 1915 (c. 97), s.1(4)): see *Welby v. Parker* [1916] 2 Ch. 1.

(5) “Steps for the enforcement of the rights of any creditors” (Trading with the Enemy (Amendment) Act 1916 (c. 105), s.1(7)): see *Holt v. A.E.G. Electric Co. Ltd* [1918] 1 Ch. 320.

(6) A solicitor’s letter before action is not a step in the action (*Longstaffe v. Woodrow* 38 S.J. 275).

(7) Where there was a charge of “taking steps” to evade purchase tax the steps taken had to be specified (*Robertson v. Rosenberg* [1951] 1 T.L.R. 417).

(8) “Taking of steps with a view to the fraudulent evasion of tax” (Finance Act 1972 (c. 41), s.38(1)). Where a trader, who had a turnover which obliged him to register for VAT, decided not to do so, he had taken “steps” within the meaning of this section as soon as he started to operate the business in such a way as to implement his decision (*R. v. McCarthy* [1981] S.T.C. 298).

See FRESH STEP.

STEP-DAUGHTER. A bequest of residue to testator’s “step-daughter” held valid in favour of a daughter by his supposed wife, though such woman had a husband living at the time of the marriage ceremony between her and the testator and which husband was living at testator’s death (*Wilkinson v. Joughin* L.R. 2 Eq. 319).

See DAUGHTER.

STERLING. “ ‘Sterling’ is, of course, simply the name of our currency, English pounds, shillings and pence” (*per* Denning L.J. in *Treseder-Griffin v. Co-operative Insurance Society* [1956] 2 Q.B. 127).

STERN. See AT OR NEAR.

STETHE or STEDE. “Stethe or stede betokeneth properly a banke of a river, and many times a place, as stowe doth ” (Co. Litt. 4 b).

STEVEDORE. “Formerly the loading and unloading a ship was done by the master, but it has been found necessary, particularly with regard to large cargoes, that some person should be employed to load and unload who is especially accustomed to that business. Hence has arisen the use of stevedores, who are in the position of persons exercising an independent employment. In one sense the stevedore is the AGENT of the shipowner, because he is set in motion by him; but still he is not such agent for whose acts the shipowner is liable” (*per* Willes J., *Murray v. Currie* L.R. 6 C.P. 27). See Merchant Shipping (Stevedores and Trimmers) Act 1911 (c. 41).

See EMPLOYED; SEA-GOING.

STEWARD. (1) Steward “is a word of many significations,” but in s.78, Litt., “it signifieth an officer of justice, viz. a keeper of courts, etc.” (Co. Litt. 61 a, b, which see). See also Cowel; Jacob.

(2) As to the right of a steward of a manor to have the custody of the manorial court rolls, see *Re Jennings* [1903] 1 Ch. 906; distinguished *Beaumont v. Jeffery* 132 L.T. 246. (Copyhold tenure abolished: see Law of Property Act 1922 (c. 16), Pt. V.)

Stat. Def., Stamp Duty Act 1891 (c. 39), s.122; Copyhold Act 1894 (c. 46), s.94; Settled Land Act 1925 (c. 18), s.117.

STEWARTRY. See COUNTY; SHERIFFDOM.

STICHE. A SELION (Elph. 621, citing Spelm. *Selio*).

STILL. Trust property "still retained" by a trustee (Trustee Act 1888 (c. 59), s.8(1); cp. Limitation Act 1939 (c. 21), s.19) meant property which, at the time of action brought, the trustee actually had or had the power of getting (*Thorne v. Heard* [1895] A.C. 495; *Re Page* [1893] 1 Ch. 304; *Re Timmis* [1902] 1 Ch. 176, cited TRUSTEE; *Re Jordison* [1922] Ch. 440). See CONVERT; RETAIN.

Stat. Def., Spirits Act 1880 (c. 24), s.3.

STINT. Common of pasture "without stint," or "sans nombre," does not mean that you are entitled to depasture on the common as many commonable animals as you please (*Mellor v. Spateman Wms. Saund.* (6th ed.) 339, 340, 346); it connotes that the number is "unmeasured" (3 Bl. Com. 239), *i.e.* not precisely ascertained. If there is no precise regulation, the number of animals cannot exceed those which are, or could be, ordinarily levant and couchant on the land to which the right is annexed (*Morley v. Clifford* 20 Ch. D. 753; *Clayton v. Corby* 5 Q.B. 415, cited PROFIT À PRENDRE).

STIPEND. A bequest of "£100 for masses for the repose of my soul at the stipend of 5s. each"; held, in Ireland, as meaning "at the price" of, etc., and as not involving any attempt to create a perpetuity (*Phelan v. Slattery* 19 L.R. Ir. 177).

Stat. Def., Clergy Pensions Measure (9 & 10 Eliz. 2, No. 3), 1961, s.46(1).

STIPENDIARY. Stipendiary lands: see FEUD.

Stipendiary magistrate. Stat. Def., Administration of Justice Act 1973 (c. 15), Sched. 1, para. 3; Justices of the Peace Act 1979 (c. 55), s.70; Judicial Pensions Act 1981 (c. 20), s.33. See MAGISTRATE.

STIPULATED. (1) A bill of sale payable "on demand," provides no "stipulated time of payment" within the meaning of the form prescribed by the schedule to Bills of Sale Act 1882 (c. 43), and is void (*per* Brett M.R., and Fry L.J., *Melville v. Stringer* 13 Q.B.D. 392; *Hetherington v. Groome* 13 Q.B.D. 789; *Furnivall v. Hudson* [1893] 1 Ch. 335). The essence of the thing is that "the time must be definitely stated. Therefore, an agreement to pay 'on demand,' or on the happening of an uncertain event, or to pay a sum for which the grantor might become liable under a guarantee, will not do in a bill of sale" (*per* Lindley M.R., *De Braam v. Ford* 69 L.J. Ch. 85); but an agreement to pay "on or before" a fixed day will do (*ibid.* [1900] 1 Ch. 142). See also as to what is a compliance with this requirement, *Edwards v. Marston* [1891] 1 Q.B. 225, also cited BALANCE.

(2) As to a condition of sale that expenses of re-sale, etc., shall be recoverable as "stipulated damages"—"opinions have differed whether the party should only be allowed to recover what damage he had really sustained (*Randal v. Everest Moo & M.* 41; see *Boys v. Ancell* 5 Bing. N.C. 390), or the stipulated sum (*Crisdee v. Bol-*

ton 3 C. & P. 240). But such a condition does not preclude the seller from maintaining an action for general damages, where the purchaser breaks off from the contract altogether. It applies in case of a breach of any of the particular conditions (*Icely v. Grew* 6 N. & M. 467).” Sug. V. & P. (14th ed.) 33, 40. See also LIQUIDATED DAMAGES.

(3) *Semble*, “it is stipulated” imports an agreement or covenant, but not a condition; yet if the phrase is “it is stipulated and conditioned,” it will operate both as an agreement or covenant, and a condition (*Doe d. Henniker v. Watt* 8 B. & C. 308).

See EXPRESSLY STIPULATED.

STIPULATION. See *Hill v. Fox* 4 H. & N. 364.

“Stipulation” in mortgage charge in Land Registry: see *per* Cozens-Hardy L.J., *Capital & Counties Bank v. Rhodes* [1903] 1 Ch. 655–657, cited LEGAL ESTATE.

STIRPES. See PER STIRPES.

STOCK. (1) “The term ‘stock’ or ‘capital stock’ which is used in Companies Clauses Consolidation Act 1845 (c. 16), ss.61–64 (see Companies Act 1948 (c. 38), ss.61, 62), obviously is derived from the consideration that these were what were called joint stock companies, and that ‘stock’ was the short name for ‘joint stock’; and ‘joint stock’ in my opinion is only another name for ‘shares,’ because the owner of part of the capital of a company is an owner of a part of the joint stock or an owner of a share of the joint stock. The use of the term ‘stock’ appears to me merely to denote that the company have recognised the fact of the complete payment of the shares, and that the time has come when those shares may be assigned in fragments, which for obvious reasons could not be permitted before; but that stock shall still be the qualifications, *e.g.* of directors, who must possess twenty shares or whatever the number may be, and that the meetings shall be of the persons entitled to this stock, who shall meet as shareholders and vote as shareholders in the proportion of shares which would entitle them to vote before the consolidation into stock. It appears to me that the doubt which has arisen as to the identity of stock and shares has sprung from this circumstance, that it has been supposed, without sufficient attention having been paid to these provisions, that stock in a railway had some sort of analogy to stock in the public funds. It has none whatever. It is possible that debenture stock in a railways company may be said to have some analogy to stock in the public funds; but the joint stock capital of a company is a perfectly different thing from stock in the public funds. In my opinion, when, in that state of things, a man has an interest in a railway, and is an owner of stock in a railway, he is said to be a shareholder in the company, and would call himself a shareholder in the company” (*per* Cairns C., *Morrice v. Aylmer* 10 Ch. 148; affirmed L.R. 7 H.L. 717). It was accordingly held in that case that a bequest of “shares” in a railway carried testator’s stock in that railway; see also SHARE. Cp. *Re Herring* [1908] 2 Ch. 439, cited DEBENTURE STOCK.

(2) See also, as to a bequest of “stock,” *Collison v. Curling* 9 Cl. & F. 88; *Kirby v. Potter* 4 Ves. 750; *Sibley v. Perry* 7 Ves. 522, 534; *Measure v. Carleton* 30 Bea. 538; *Grant v. Mussett* 2 L.T. 133; STOCKS; BANK STOCK.

(3) As to a bequest of non-existing “stock,” see *Lindgren v. Lindgren* 15 L.J. Ch. 428, the principle of which was applied in *Findlater v. Lowe* [1904] 1 Ir. R. 519.

(4) “All my stock standing in my name in various companies, together with all bonds, etc.”: see *Re Parrott* 53 L.T. 12.

(5) "Government or other stock" (Bankruptcy Act 1849 (c. 106), s.201) included railways shares (*Ex p. Copeland* 22 L.J. Bank. 17; 2 D.G.M. & G. 914).

(6) "'Stock' cannot be considered as money" (*Nightingall v. Devisme* 1 Bl. W. 684); so an agreement to pay a percentage on all "money" received through A's means, does not entitle him to receive the percentage on a transfer of stock obtained by him (*Jones v. Brinley* 1 East, 1).

(7) In Trustee Act 1850 (c. 60), s.2, "'stock' shall mean any fund, annuity, or security, transferable in books kept by any company or society established or to be established, or transferable by deed alone or by deed accompanied by other formalities, and any share or interest therein" (s.2); a definition which included shares in a joint stock company (*Re Angelo* 5 D.G. & S. 278), even though not fully paid-up (*Re New Zealand Trust Co.* [1893] 1 Ch. 403). In Trustee Act 1893 (c. 53), s.50, "'stock' includes fully paid-up shares," and as regards vesting orders, "includes any fund, annuity, or security, transferable in books kept by any company or society, or by instrument of transfer either alone or accompanied by other formalities, and any share or interest therein"; *semble*, *Re New Zealand Trust Co.* (sup.) "holds good under the Act of 1893, so far as vesting orders are concerned" (Seton (7th ed.), 1212, 1213). See Trustee Act 1925 (c. 19), s.68(14).

(8) "Government stock, funds, or annuities," "stock or shares of any public company" (Judgments Act 1838 (c. 110), s.14): see *Morris v. Manesty* 7 Q.B. 674.

(9) "Stock or shares of any public company" does not include debentures (*Sellar v. Bright* [1904] 2 K.B. 446). Cp. STOCKS.

(10) As to distinction between ordinary stock and debenture stock, see *Morrice v. Aylmer* sup.; *Re Bodman* [1891] 3 Ch. 135, cited DEBENTURE STOCK.

(11) As to effect of converting shares into stock, see Companies Act 1862 (c. 89), s.29 (Companies Act 1948 (c. 38), ss.61, 62); *Morrice v. Aylmer* sup.

(12) A devise to A and his "stock," passed the fee simple (*Counden v. Clerke* Hob. 33).

(13) Stamp Act 1891 (c. 39): see s.122, on which see *Furness Railway v. Inland Revenue Commissioners* 33 L.J. Ex. 173.

(14) "Stocks, shares, or securities of any company paying a dividend"—as to what investments are authorised under these words: see *Consterdine v. Consterdine* 31 L.J. Ch. 807.

(15) Shares in Canadian land company were held to be included in the expression "stocks, funds, or securities" in a will: see *Re Inman* [1915] 1 Ch. 187.

(16) "Stocks and shares," in a will, held to be confined to stocks and shares in limited companies (*Re Everett* [1944] Ch. 176); but it may be a synonym for "stock exchange investments" (*Re Purnchard's Will Trusts* [1948] Ch. 312).

(17) "Stocks, funds and securities," in an investment clause in a settlement was held to include shares in a company (*Re McEacharn's Settlement Trusts* [1939] Ch. 858).

Stat. Def., Trustee Act 1925 (15 Geo. 5, c. 19), s.68; Companies Act 1948 (c. 38), s.455; Finance Act 1963 (c. 25), s.59(4); Finance Act 1920 (c. 18), s.42; Finance Act 1980 (c. 48), s.100.

See FOREIGN; GOVERNMENT STOCK; JOINT STOCK; NOMINAL; PUBLIC STOCKS; AVERAGE STOCK; FARMING STOCK; LIVE AND DEAD STOCK; LIVESTOCK; PER STIRPES.

STOCK AWASH. Anchor carried "stock awash," Thames Bye-laws, 1872, r. 20, altered to "ring awash" by Thames Bye-laws, 1898, r. 11: see *The J. R. Hinde* [1892] P. 231; *The Six Sisters* [1900] P. 302; *The Hornet* [1892] P. 361.

STOCK IN THE FUNDS. See FUNDS.

STOCK-IN-TRADE. (1) This phrase comprises all such chattels as are acquired for the purpose of being sold, or let to hire, in a person's trade; but, probably, utensils in trade are also included in the phrase (*Seymour v. Rapier* Burb. 28). Setting aside a mere dictum in *Elliott v. Elliott* (11 L.J. Ex. 3), the only modern authority on the interpretation of this phrase, standing alone, seems to be *Re Richardson* (50 L.J. Ch. 488). In that case the testator was a barge-builder, and, according to the custom of that trade, he would sometimes, on the sale of a new barge, accept an old one in part payment which he would repair and let out on hire; at the time of his death he had five of such barges: held, that these barges passed under a bequest of his "stock-in-trade as a barge-builder."

(2) On a dissolution of a partnership, "the stock-in-trade, property, and effects of the business" had to be valued and a proportion thereof paid for to the retiring partner; held, that goodwill was not to be included as within the phrase (*Chapman v. Hayman* 1 T.L.R. 397); but see *Re David and Matthews* [1899] 1 Ch. 378, cited GOODWILL. See hereon *Re Leas Hotel* [1902] 1 Ch. 332.

(3) A bequest of "my stock-in-trade and trade debts" passes it and them as existing at the death of the testator (*Ferguson v. Ferguson* Ir. Rep. 6, Eq. 199, where Sullivan M.R., rested his judgment mainly on *Goodlad v. Burnett* 1 K. & J. 341, cited My).

(4) Copyrights are not stock-in-trade for tax purposes (*Mason v. Innes* [1967] Ch. 1079).

Stat. Def., Revenue (No. 1) Act 1864 (c. 18), s.9; but as to the then duty on fire insurances, see Revenue Act 1869 (c. 14), s.12 and Sched. C.

See LIVE AND DEAD STOCK.

STOCKBROKER. See BROKER; SHARE-BROKER. Cp. JOBBER.

As to a stockbroker's lien, see *Re London & Globe Finance Corporation* [1902] 2 Ch. 416, and cases there cited.

STOLEN GOODS. For a discussion of the circumstances in which stolen goods can "continue to be stolen goods," or not, see *Att.-Gen.'s Reference (No. 1 of 1974)* [1974] Q.B. 744.

Stat. Def., Theft Act 1968 (c. 60), s.24(4); Limitation Act 1980 (c. 58), s.4(5).

STONE. (1) Blocks cut with wedges from a quarry, and then reduced to certain dimensions and squared to be used as sleepers, are (in an Act imposing toll) "stone," as distinguished from "merchandise" (*Fisher v. Lee* 10 L.J.Q.B. 1); but coprolites are "goods wares or merchandise," as distinguished from "stone" (*Dant v. Moore* 9 L.T. 381). See GOODS, WARES, AND MERCHANDISE; MINE.

(2) "Stone, concrete, slag" (Construction (General Provisions) Regulations 1961 (No. 1580), Sched. 2). A household brick is not a similar material to stone, concrete or slag (*Hobb v. Robertson* (C.G.) [1970] 1 W.L.R. 980).

Stat. Def., Weights and Measures Act 1963 (c. 31), Sched. 1, Pt. 5.

STOP. (1) To "stop up" a highway (Highways Act 1815 (c. 68), s.2) did not include a power to narrow a road (*R. v. Milverton* 6 L.J.M.C. 73).

(2) A stop order is an *ex parte* order, on a fund in court, obtained by a person (not, necessarily, a party to the action or matter) claiming the same or a share thereof or a lien or charge thereon, and which prohibits dealings with the fund with-

out notice to the person obtaining the order (Dan. Ch. Pr. (8th ed.), ch. 23, s.4; R.S.C. Ord. 46, r. 12, now Ord. 50, r. 10). A *Distringas* was a writ issued from the Court of Exchequer having a like effect on stock or shares in a public company; in its stead, a new writ of *distringas* was provided by Court of Chancery Act 1841 (c. 5), s.5, which was only issuable against the Bank of England. But see R.S.C., Ord 46, r. 4, now Ord. 50, r. 11, under which the chief effect of a *distringas* is now obtained by a stop notice. Cp. CHARGING ORDER.

(3) "Stop . . . and navigate with caution" in Regulations for Preventing Collisions at Sea 1910, Art. 16: see *The Union* [1928] P. 175.

(4) "Stopped" (of a cage in a coal mine): see *Garallan Coal Co. Ltd. v. Anderson* [1927] A.C. 59.

(5) "Stop list" of a trade protection association: see *R. v. Denyer* 95 L.J.K.B. 699; *Hardie & Lane Ltd. v. Chilton* [1928] 2 K.B. 306; but see *Thorne v. Motor Trade Association* [1937] A.C. 797, which settles the dispute between these two cases, one of which was civil and the other criminal.

(6) "Stop" (Road Traffic Act 1960 (c. 16), s.77(1), now Road Traffic Act 1972 (c. 20), s.25(1)) means stop and stay with the vehicle long enough, in the prevailing circumstances, to provide the information required under this section to be given to any interested person (*Lee v. Knapp* [1967] 2 Q.B. 442; *Ward v. Rawson* [1978] R.T.R. 498. "Stop" means refraining from leaving the scene of the accident (*R. v. Criminal Injuries Compensation Board, ex p. Carr* [1981] R.T.R. 122).

(7) "Stopped for the purpose of complying with regulation 8" ("Zebra" Pedestrian Crossing Regulations 1971 (No. 1524), reg. 10 (b)). A vehicle which stops at a pedestrian crossing to allow a pedestrian to cross has "stopped for the purpose of complying with regulation 8," namely to accord precedence to such pedestrian, even although the pedestrian has not set foot on the crossing (*Gullen v. Ford; Prowse v. Clarke* [1975] 1 W.L.R. 335).

See WITHDRAWN; SLACKEN; MARGINAL NOTES. Cp. SUSPEND.

STOPPAGE. (1) (a) "Stoppage of trains" in a charterparty: see *The Village Belle* 30 L.T. 232, cited CIVIL COMMOTION.

(b) "Stoppage of trains . . . or any cause beyond the personal control" of the charterer, includes want of trucks or waggons into which to load, where such mode of loading is customary (*Turnbull v. Cruickshank* 42 Sc. L.R. 207). Cp. DETENTION BY RAILWAYS.

(2) "Stoppage *in transitu*" is when goods have been consigned on credit and the consignee has become bankrupt, or failed, or has declared himself insolvent (see *per Mellish* L.J., *Ex p. Chalmers* 8 Ch. 289), the consignor may in many cases countermand delivery, and before or at their arrival at the place of destination, may cause them to be delivered to himself or to some other person for his use (*Abbott* (14th ed.), Pt. 3, ch. 9); see also Sale of Goods Act 1893 (c. 71), ss.44–46, on which see *M'Dowall & Neilson's Trustees v. Snowball* 42 Sc. L.R. 56, and *Dobell v. Neilson* 42 Sc. L.R. 283, cited APPROVED BILL: *Jobson v. Eppenheim* 21 T.L.R. 468; *Carver* (9th ed.), Pt. 3, ch. 17); Add. C. (11th ed.) 612 *et seq.*: *Wms. Bank*. (16th ed.) 295, 296; *Wiseman v. Vandeputt Tudor's* L.C.M.L. 410; *Mordaunt v. British Oil & Cake Mills* [1910] 2 K.B. 502, cited ASSENT; *Re Johnson* 99 L.T. 305.

(3) (a) "Strikes or stoppages" of workmen: see *Stephens v. Harris* 57 L.J.Q.B. 203, cited STRIKE.

(b) Stoppage by strike "continued for a period of six running days" construed to mean a stoppage in existence at the beginning of the loading time (*Steel v. Grand Canary Coaling Co.* 90 L.T. 729).

(c) “Stoppage at collieries”: see *Arden S.S. Co. v. Mathwin & Son* [1912] S.C. 211.

STORAGE. (1) “ ‘Storage charges’ comprise the cost of putting into store and the rent of the place hired; they do not include expenditure on the goods themselves,” e.g. the cost of fodder and food to cattle is not within “storage charges” in r. 10c, York-Antwerp Rules, 1890 (*per* Bigham J., *Anglo-Argentine Agency v. Temperley Co.* [1899] 2 Q.B. 403, cited **GENERAL AVERAGE**).

(2) “Purposes of storage” (Rating and Valuation (Apportionment) Act 1928 (c. 44), s.3) includes cold storage (*Union Cold Storage Co. v. Bancroft (Manchester Revenue Officer)* [1931] A.C. 459, 492). “Storage” includes the stacking of timber in such a way as to facilitate its drying out (*Buncombe v. Baltic Sawmills Co.* [1961] 1 W.L.R. 1181). But premises used for the warehousing of whisky in cask, and for its blending and bottling, were not used for “storage” within the meaning of this section (*Lanarkshire Assessor v. Arbuckle, Smith & Co.* 1968 S.L.T. 20; *Bell (Arthur) & Sons v. Fife Assessor* 1968 S.L.T. 185).

(3) “Storage” (Industrial Development Act 1966 (c. 34), s.1(3)). Gas container vehicles, into which gas is pumped on manufacture, are being used for “storage” up to the point where the vehicle moves off for the purpose of delivery (*British Oxygen Co. v. Minister of Technology* [1971] A.C. 610).

STORE. (1) As to when gasoline is “stored or kept” on premises, see *Thompson v. Equity Fire Insurance* 80 L.J.P.C. 13.

(2) To remove a drum of petrol from a shed to a garage and there empty it is not to “store” petrol in the garage: see *Jefferson v. Derby Farmers Ltd.* [1921] 2 K.B. 281.

See also **EX-STORE**; **IN STORE**. Cp. **WAREHOUSE**.

Stat. Def., Explosives Act 1875 (c. 17), s.108.

STOREHOUSE. (1) “Storehouse” (Volunteer Act 1863 (c. 65), s.26): see *Pearson v. Holborn* [1893] 1 Q.B. 389.

(2) In regulations made under Locomotives on Highways Act 1896 (c. 36), s.5: see *Appleyard v. Bingham* [1914] 1 K.B. 258.

STORER. See **STANDELL**.

STORES. Bunker coals are “stores” within the meaning of s.24, River Humber Pilotage Act 1832 (c. cv): see *The Nicolay Belozwetow* [1913] P. 1. See also *The Tongariro* [1912] P. 297, cited **NAVIGATING IN BALLAST**.

“Arms, munitions of war, and stores”: see **ARMS**.

“Stores and other effects” see **EFFECTS**.

Stat. Def., Public Stores Act 1875 (c. 25), s.2; Customs and Excise Management Act 1979 (c. 2), s.1.

See **IRON**; **TACKLE**.

STOREY. (1) As regards the definition of topmost storey in London Building Act 1894 (c. ccxiii), s.5(14), *semble*, it is of general acceptance, for a “storey” need not necessarily be a room with four vertical walls; a room built into the roof is a “topmost storey” (*Foot v. Hodgson* 25 Q.B.D. 160).

(2) House “let in different storeys, tenements, lodgings, or landings”: Sched. B, r. 6, House Tax Act 1808 (c. 55) (*per* Lord Brampton, *Grant v. Langston* [1900] A.C. 390, cited **HOUSE**).

STORM. In an insurance policy affording indemnity against damage by storm, "storm" means something more prolonged and widespread than a gust of wind (*S. & M. Hotels v. Legal and General Assurance Society* [1972] 1 Lloyd's Rep. 157).

STOW. A valley (Co. Litt. 4 b); but a few lines further down "stowe" is said to signify a place.

STOWAGE. "Stowage under the supervision of the captain." A clause in a charter-party providing for such stowage by the charterers was held not to limit the charterers' liability to stow safely, save so far as damage could be shown to be due to the intervention of the captain in the matter of stowage (*Canadian Transport Co. v. Court Line Ltd.* [1940] A.C. 934).

"Improper stowage": see **IMPROPER NAVIGATION**.

STRAND. " 'Strond' is a Saxon word, signifying a shore or bank of a sea or any great river" (Cowel).

STRANDING. (1) In a marine insurance, "a touch and go" is not a stranding; "in order to constitute a stranding, the ship must be stationary" (*per* Ellenborough C.J., *Macdougale v. Royal Exchange Assurance* 4 M. & S. 503). "If the ship merely touches or strikes and gets off again, how much soever she may be injured, she is not stranded; but if she settles and remains for any time, this is a stranding, without reference to the degree of damage which she sustains (*Harman v. Vaux* 3 Camp. 429). A resting for 15 or 20 minutes has been held to be a stranding, whether it be upon a bank or a rock (*Baker v. Towry* 1 Starkie, 436). It is not, however, every stationary taking the ground that constitutes a stranding. Thus, where a vessel takes the ground in the ordinary and usual course of navigation and management in a tidal river or harbour, upon the ebbing of the tide, or from a natural deficiency of water, so that she may float again upon the flow of the tide or increase of the water, this is not a stranding within the meaning of the memorandum (*Magnus v. Buttemer* 11 C.B. 876; see also *Corcoran v. Gurney* 22 L.J.Q.B. 113). So, when a vessel took the ground several times in going up a harbour in the ordinary course of navigation from the shallowness of the water, this was held to be no stranding (*Hearne v. Edmunds* 1 Brod. & B 388). Similarly, where a vessel took the ground in a tidal harbour, where it was intended she should do so at the time she was moored, and was injured by striking against some hard substance, this was considered not to be a stranding (*Kingsford v. Marshall* 1 L.J.C.P. 135). See also *Bryant & May v. London Assurance* 2 T.L.R. 591.

(2) "But it is otherwise where the ground is taken under circumstances of such an accidental and unforeseen character as not to be in the usual course of navigation (see judgment of Lord Tenterden, *Wells v. Hopwood* 3 B. & Ad. 20; *Letchford v. Oldham* 5 Q.B.D. 538). And where a ship was improperly fastened to a pier in a basin, so that she took the ground, and when the tide left her, she fell over and was bilged, this was held to be stranding (*Carruthers v. Sydebotham* 4 M. & S. 77; see also *Bishop v. Pentland* 6 L.J.O.S.K.B. 6). So, where the water being drawn off from an inland navigation for the purpose of repairing it, a vessel settled accidentally upon some piles which were not previously known to be there (*Rayner v. Godmond* 5 B. & Ald. 225); where a vessel, having struck upon an anchor in a harbour, was injured and in danger of sinking, and was thereupon hauled higher up the harbour and drawn upon the ground, where she remained for some time (*Barrow v. Bell* 4 L.J.O.S.K.B. 47); where a ship under stress of weather made a tidal harbour,

but it being low water she grounded there (*Corcoran v. Gurney* sup.); and where a ship was run aground for the purpose of preventing further mischief (*De Mattos v. Saunders* L.R. 7 C.P. 570); these were all held to be cases of stranding" (1 Maude & P. 496). So, where a Thames barge was run ashore, partly from fear she would sink and partly for repair, that was held to be a stranding (*per* Day J., *Russell v. Lodge* 6 T.L.R. 353).

(3) "The stranding of a lighter, in the legal technical sense of 'stranding,' is an event of very frequent occurrence on a flat shore. The mere taking of the ground and remaining there a short time and then getting off again, would be held a 'stranding' " (*per* Tindal C.J., *Hoffman v. Marshall* 2 Bing. N.C. 390).

(4) The warranty against average, in an insurance on cargo, "unless the ship be stranded, sunk, or burnt," is not deleted if the stranding, etc., happens when the goods are not on board (*The Alsace and Lorraine* [1893] P. 209; see also *The Glenlivet* [1893] P. 164, also cited BURN). See hereon Marine Insurance Act 1906 (c. 41), Sched. 1, r. 14.

See PERIL OF THE SEA; SINK; STATIONARY.

STRANGER. (1) " 'Stranger' may be derived from the French *estrangier*, *aliena*. It signifies generally in our language, a man born out of the land, or unknown; but in the law, it hath a special signification, for him that is not privy or party to an act. As a stranger to a judgment, is he to whom a judgment doth not belong; and in this sense it is directly contrary to party or privy" (Cowel). See CONSIDERATION.

(2) Stranger, in regard to copyhold fines on admittance: see *A.-G. v. Sandover* [1904] 1 K.B. 689; see Law of Property Act 1922 (c. 16), s.128.

(3) An independent contractor is not a "stranger" within the principle of an occupier's exemption from liability for the consequences of a fire caused in his house by a stranger (*Balfour v. Barty-King; Hyder and Sons (Builders) Third Parties* [1957] 1 Q.B. 496).

(4) As to who is a "stranger," for whose fire an occupier might not be responsible for its escaping, see *Emanuel (H. & N.) v. Greater London Council* [1971] 2 All E.R. 835.

STRANGERS IN BLOOD. Persons who have the legal status of "children" by virtue of a foreign law, applicable to their case, are not "strangers in blood," but are "children" for the purpose of assessment to legacy duty (*Skottowe v. Young* L.R. 11 Eq. 474; see also *Re Goodman* 17 Ch. D. 266; *Re Grove* 40 Ch. D. 216). But where by the foreign law children, illegitimate by the law of England, are not admitted to the full status of lawful children but are merely recognised as entitled to the rights of natural children, such persons are not "lineal issue" but are "strangers in blood" (*Re Atkinson* 21 Ch. D. 100). In that case the point was raised in argument but not referred to in the judgment, as to whether children illegitimate by the law of England, can, under any circumstances, be other than "strangers in blood" for the purpose of succession to real estate in England. See CHILD.

STRAW. Stubble, or, as it is called in Cambridgeshire, haulm, was not "straw" within Malicious Injuries to Property Act 1827 (c. 30), s.17 (*R. v. Reader* 4 C. & P. 245). In the replacing enactment (Malicious Damage Act 1861 (c. 97), s.17), "haulm" and "stubble" were used as well as "straw."

STRAY. (1) Animals "straying" on a highway "implies that they were not in charge of someone who had control over them" (*per* Blackburn J., *Lawrence v. King* L.R.

3 Q.B. 345, cited LYING ABOUT). See also *Underwood v. Henderson* 36 Sc. L.R. 58, cited PERMIT; *Ellis v. Banyard* 55 S.J. 500. See ESTRAY.

(2) No right of stray, or of roaming at will, is acquired by the mere user by the public of an open space belonging to a private owner (*Robinson v. Cowpen* 62 L.J.Q.B. 619; 63 *ibid.* 235). Cp. DEDICATION.

(3) Where dams, anxious to rejoin their calves penned on the other side of a railway line, broke down an adequate fence which was in good repair, they were held not to have “strayed” within s.68 of the Railway Clauses Consolidation Act 1845 (c. 20) (*Cooper v. Railway Executive* [1953] 1 W.L.R. 223).

STREAM. (1) “ ‘Stream’ is properly a current of waters running over the level at random, and be not kept in with banks or walls; and so Linwood saith, that *flumen* which is a stream *nihil aliud est quam ipsa aqua*” (Callis, 83).

(2) (a) “ ‘Stream,’ in its primary and natural sense, denotes a body of water having, as such body, a continuous flow in one direction. It is frequently used to signify running water at places where its flow is rapid as distinguished from it sluggish current in other places. I see no reason to doubt that a subterraneous flow of water may, in some circumstances, possess the very same characteristics as a body of water running on the surface; but, in my opinion, water, whether falling from the sky or escaping from a spring, which does not flow onward with any continuity of parts but becomes dissipated in the earth’s strata and simply percolates through or along those strata until it issues from them as a lower level, through dislocation of the strata or otherwise, cannot with any propriety be described as a stream” (*per* Lord Watson, *McNab v. Robertson* [1897] A.C. 134). In accordance with that definition the majority of the House of Lords held that a grant in a lease of “the right to the water in the said ponds and in the streams leading thereto” did not include the water in a tiled drain in the lessor’s adjoining land which drain intercepted water that otherwise would have found its way into the ponds. Halsbury C., was the dissenting peer and he said, “Though it be true that the word ‘stream,’ in its more usual application, does point to a definite stream within defined banks, I do not think it is confined to that meaning. We speak of a stream of tears flowing from the eyes, and we speak of blood streaming from a vein.”

(b) “A stream of water, in law, is water which runs in a defined course. It is that which is capable of diversion; and it has been held that it does not include the percolation of water below ground” (*per* Jessel M.R., *Taylor v. St. Helen’s* 6 Ch. D. 264, cited WATERCOURSE) Cp. SPRING.

(3) Contextually, a grant of “all streams” has been held to mean all water in the land granted (*Whitehead v. Parks* 27 L.J. Ex. 169).

(4) In Rivers Pollution Prevention Act 1876 (c. 75), an elaborate definition of “stream” was provided by s.20, on which see *Ribble River Committee v. Croston* [1897] 1 Q.B. 251. See also *West Riding Rivers Board v. Preston* 92 L.T. 24; *Airdrie Magistrates v. Lanark County Council* [1910] A.C. 286.

(5) “Stream” was used synonymously with “river” in Salmon Fishery Act 1861 (c. 109), s.27 (*Rolle v. Whyte* L.R. 3 Q.B. 305).

(6) In Waterworks Clauses Act 1847 (c. 17), s.3, “streams” included “springs, brooks, rivers, and other running waters.” “Owners or occupiers” of a stream, within s.6 of that Act, were the owners and occupiers of that portion of it with which a water company might be interfering (*Bush v. Trowbridge Water Co.* 10 Ch. 459, cited TAKE, which see also as to “take or use” a stream).

(7) “Stream” (*Ayr and Calder Navigation Act* 1774 (c. 96), s.97) only applied to artificial streams (*Smith v. Barnham* 1 Ex. D. 419, cited WATERCOURSE).

(8) “Navigable stream”: see *West Riding Rivers Board v. Gaunt* 67 J.P. 183, cited SEWER; NAVIGABLE.

(9) “Natural stream or watercourse” (Public Health Act 1875 (c. 55), s.17): these words did not include an agricultural ditch made by a landowner for the sole purpose of draining his land or removing from it superfluous water. Such a ditch was however a “sewer,” within s.42 of the same Act, but being a sewer made by a person for his own profit within s.13(1), did not vest in the local authority: see *Phillimore v. Watford Rural District Council* [1913] 2 Ch. 434. See also *Maxwell-Willshire v. Bromley* 87 L.J. Ch. 241.

(10) “Whilst in stream” in a charterparty did not refer to the mere presence of the ship in the stream but meant whilst she was loading in the stream (*V. M. Salgaoncar e Irmaos of Vasgo de Gama v. Goulandis Bros.* [1954] 1 W.L.R. 481).

Stat. Def., Water Supplies (Exceptional Shortage Orders) Act 1934 (c. 37), s.1, Sched.; Rivers (Prevention of Pollution) Act 1951 (c. 64), s.11; Control of Pollution Act 1974 (c. 40), s.56.

See SEWER; WATERCOURSE.

STREET. (1) (a) The primary meaning of “street” is a public (or private) roadway (*St. Mary, Islington v. Barrett* L.R. 9 Q.B. 278; *Midland Railway v. Watton* 17 Q.B.D. 30) (including its footpaths, if any) running in front of houses or buildings, of a sufficient length and in such a continuous line, as to give the roadway the character of a “street”; and such a roadway is more emphatically a “street” if it has a continuous line of houses on each side of it. The houses need not be actually contiguous but must be so near to each other as to form a continuous line.

(2) In *Robinson v. Barton* 8 App. Ca. 798, Lord Blackburn said that the popular and ordinary sense of the word “street” is a highway with houses on each side. It is submitted that the legal and ordinary sense of the word “street” does not require that there should be houses on each side of the roadway; nor that such roadway should necessarily be a highway. Thus, in *Portsmouth v. Smith* 13 Q.B.D. 184, Brett M.R., said, “The word ‘street,’ when popularly used, means a thoroughfare, bounded either on one or both sides by houses”; see also observation of Lord Blackburn in *Portsmouth v. Smith* when in H.L. 54 L.J.Q.B. 475; 10 App. Ca. 364; *Jowett v. Idle* 4 T.L.R. 101, 442; *Battersea v. Palmer* [1897] 1 Q.B. 220, cited NEW STREET. But, *semble*, that “roadway” should be the phrase instead of “thoroughfare,” for a cul-de-sac is a street and may be a public street: see *Souch v. East London Railway* L.R. 16 Eq. 108; *per* Esher M.R., *Davis v. Greenwich* [1895] 2 Q.B. 219. A cul-de-sac, not dedicated as a HIGHWAY, may be a “street” within Public Health Act 1875 (38 & 39 Vict., c. 55), s.150 (*Walthamstow v. Sandell*, 2 L.G.R. 835). See also *Re Stoker & Mayor, etc., of Morpeth* [1915] 2 K.B. 511.

(3) Assuming that houses exist in such number and position as to impart the character of “street” to the locality, then the natural and prima facie sense of the word “street” is the roadway (*per* Selborne C., *Robinson v. Barton* 53 L.J. Ch. 230). So, Jessel M.R., in *Taylor v. Oldham* 4 Ch. D. 408, said—“The definition of a ‘street’ is correctly laid down in the Imperial Dictionary: ‘The street itself is no doubt, properly, the paved or prepared road; that is the street. It sometimes includes the houses along each side of it. But that is not its proper meaning. It is called a street even without houses. There are some streets with no houses. But the usual common meaning of the word street is— a road with houses on one or both sides of it.’ ”

(4) It may be doubted whether in any sense that would (except under an interpretation clause, or except where a roadway, *e.g.* a bridge, is a mere connecting

link in a street, *Beaver v. Manchester* 26 L.J.Q.B. 311) be recognised by the courts, a ROADWAY would, in its primary meaning, be held a "street" without houses or buildings (see also *R. v. Platts* 49 L.J.Q.B. 848; *McIntosh v. Romford* 5 T.L.R. 643); but the definition from the Imperial Dictionary, having received the approval of Jessel M.R., is cited for the purpose of supporting the proposition, that it is the roadway which is the "street," in the primary acceptation of that word (see also *London, Chatham & Dover Railway v. London* 19 L.T. 250).

(5) "In Public Health Act 1875 (c. 55), s.149, and the sections which follow it [but see now the replacing sections of the Highways Act 1959 (c. 25)], the word 'street' manifestly has the same sense as when we speak of a man going out of his house into the street"; i.e. its primary meaning of the roadway (*per Selborne C., Robinson v. Barton* 8 App. Ca. 798; see also *Midland Railway v. Watton* *sup*; *Richards v. Kessick* 57 L.J.M.C. 48; *Coverdale v. Charlton* 4 Q.B.D. 104, *R. v. Fullford* *inf.*). See VEST, as to what extent the soil under, and air over, "streets," vest in local authorities; and if there be no such vesting, the soil is vested in the adjoining owners, and is not divested by general words in a Royal Grant (*Salt Union v. Harvey* 61 J.P. 375). See also *Escott v. Newport* [1904] 2 K.B. 369, cited VEST. As to the damages recoverable for injury to a highway vested in a public authority (Public Health Act 1875, s.149), see *Wednesbury v. Lodge Holes Colliery Co.* [1907] 1 K.B. 78, reversed by House of Lords and judgment of Jelf J., restored *nom. Lodge Holes Colliery Co. v. Wednesbury* [1908] A.C. 323. An area which considered as a whole as a street is not prevented from being a street within s.150 by the fact that parts of it considered alone would themselves be "streets." Existing pavements on either side of a road are not "streets" (*Abel v. Orpington U.D.C.* (1963) 61 L.G.R. 546).

(6) But Public Health Act 1875, s.157 (*cp.* Public Health Act 1936 (c. 49), s.61 and Highways Act 1959 (c. 25), ss.74, 75), whilst manifestly comprising the roadways of "streets," also included the power of making bye-laws for regulating "the buildings erected or to be erected on each side of them—the whole construction—every part of those buildings external and internal" (*per Selborne C., Robinson v. Barton* *sup.*; *Baker v. Portsmouth* 3 Ex. D. 157; see *Robinson v. Barton* as to what particularity was required in the bye-laws to justify a local authority to compel removal of disapproved buildings; see NEW STREET). So, where the City of London was empowered to take land for the purpose of forming a new "street" to the Metropolitan Meat Market, it was held that that meant not merely land for the roadway but enough for houses on both its sides (*Galloway v. London* L.R. 1 H.L. 34; see thereon *Donaldson v. South Shields* 68 L.J. Ch. 102, cited STREET WORKS; see also *London, Chatham & Dover Railway v. London* 19 L.T. 250).

(7) In Public Health Act 1875, the general definition was contained in s.4, whereby " 'street' includes any highway (not being a turnpike road), and any public bridge (not being a county bridge), and any road, lane, footway, square, court, alley, or passage, whether a thoroughfare or not"; a definition adopted by Public Health Act 1890 (c. 59), s.11(3), and, leaving out the words in the parentheses, adopted by Public Health (London) Act 1891 (c. 76), s.141. See hereon *Nutter v. Accrington* 4 Q.B.D. 375; *R. v. Goole* [1891] 2 Q.B. 212; *Fenwick v. Croydon* [1891] 2 Q.B. 216; *Baird v. Tunbridge Wells or Tunbridge Wells v. Baird* [1896] A.C. 434. These definitions include a private road (*Hill v. Wallasey* [1894] 1 Ch. 133; *Stretford v. Manchester, etc., Railway* 1 L.G.R. 683). See also *A.-G. v. Hornsey Borough Council* [1927] 1 Ch. 331; *Cowan v. Hendon Borough Council* [1939] 3 All E.R. 366.

(8) Although the definition of "street" in s.295(1) of the Highways Act 1959

(c. 25) includes a highway, it is not a necessary constituent of a street that the public should have rights over it of the kind enjoyed over a highway. An undeveloped strip of land alongside the metalled road can be part of the "street" (*West End Lawn Tennis Club (Pinner) v. Harrow Corporation* (1965) 64 L.G.R. 35). Where developers retained a twelve foot wide strip between the houses they built and the street, granted rights of way across it and did not cultivate it, the strip was held to be part of the "street," since it was not used in connection with the occupation of the houses and formed no barrier between them and the street proper (*Warwickshire C.C. v. Adkins* (1967) 203 E.G. 339). A road can be a "street" within the meaning of this section even though there are very few buildings along it (*Warwickshire C.C. v. Atherstone Common Right Proprietors* (1964) 65 L.G.R. 439).

(9) "Street," (Public Health (Buildings in Streets) Act 1888 (c. 52), s.3): see *A.-G. v. Land* [1925] Ch. 318.

(10) In Private Street Works Act 1892 (c. 57), s.5, "'street' means (unless the context otherwise requires), a street as defined by the Public Health Acts, and not being a highway repairable by the inhabitants at large." See hereon *Rishton v. Haslingden* [1898] 1 Q.B. 294, explaining *Handsworth v. Taylor* 69 L.T. 798.

(11) (a) In Metropolis Management Act 1855 (c. 120), s.250, "'street' shall apply to and include any highway (except the carriage way of any turnpike road), and any road, bridge (not being a county bridge), lane, footway, square, court, alley, passage, whether a thoroughfare or not, and a part of any such highway, road, bridge, lane, footway, square, court, alley, or passage," which definition was subsequently amplified so as to include "any mews and a part thereof" (Metropolis Management Act 1862 (c. 102), s.112). See hereon *Ellis v. London County Council* 67 L.T. 558; *Arter v. Hammersmith* [1897] 1 Q.B. 646. "Street," in Metropolis Management Act 1862, s.53, included new, as well as old, streets (*St. John, Hampstead v. Cotton* 55 L.J.Q.B. 213; 12 App. Ca. 1, following *Sheffield v. Fulham* 1 Ex. D. 395, and dissenting from *Sawyer v. Paddington L.R.* 6 Q.B. 164). As to Metropolis Management Act 1855, s.78, see *St. John, Hampstead v. Hoopel* 15 Q.B.D. 652.

(b) The above definitions in the Metropolis Management Acts were blended in London Building Act 1894 (c. ccxiii), s.5(1), thus, "'street' means and includes any highway, and any road, bridge, lane, mews, footway, square, court, alley, passage, whether a thoroughfare or not, and a part of any such highway, road, bridge, lane, mews, footway, square, court, alley, or passage." See hereon *Wood v. London County Council* 64 L.J.M.C. 276; but see thereon *Armstrong v. London County Council* [1900] 1 Q.B. 416; COMMENCEMENT.

(c) "New street" (Metropolis Management Act 1855 (c. 120), s.105), see *Astor v. Fulham Borough Council*, cited NEW STREET.

(12) In Gasworks Clauses Act 1847 (c. 15), s.3, "'street' shall include any square, court, or alley, highway, lane, road, thoroughfare, or public passage or place, within the limits of the Special Act": see *Davies v. Ripon Corporation* [1928] 1 Ch. 884 (see Gas Act 1948 (c. 67), Sched. 3, para. 46); so, in Waterworks Clauses Act 1847 (c. 17) (see s.3) (see Water Act 1945 (c. 42), Sched. 3, s.1); in Towns Improvement Clauses Act 1847 (c. 34), s.3, "'street' shall extend to and include any road, square, court, alley, and thoroughfare, within the limits of the Special Act"; in Town Police Clauses Act 1847 (c. 89), s.3, "'street' shall extend to and include any road, court, alley, and thoroughfare, or public passage, within the limits of the Special Act." Land on the seashore between two villages over which the inhabitants of those villages passed at low-tide, but by no defined track, was not a "street," "highway," or "public place" within these definitions (*Maddock v. Wal-*

lasey 55 L.J.Q.B. 267). The definition in the Town Police Clauses Act 1847 (and, *semble*, those in the others of these Acts), contemplated a passage of a public, or quasi public, character; therefore an approach to a railway station, which was the private property of the company, but only separated from the public highway by a gutter, was not such a "street" (*Curtis v. Embrey* L.R. 7 Ex. 369), not even though a public footway passed along it (*Jones v. Short* 69 L.J.Q.B. 473); but an open square (in front of, and let with, an hotel) over which for many years the public had freely passed except when the hotel keeper's carriages stood there, was held to be part of the "street" (*Marks v. Ford* 45 J.P. 157; see also *Foinett v. Clark* 41 J.P. 359).

(13) The statutory definitions do not exclude the ordinary sense of the word "street" (*per* Quain J., *St. Mary, Islington v. Barrett* L.R. 9 Q.B. 283, citing *Pound v. Plumstead* L.R. 7 Q.B. 183); they simply enlarge the meaning of "street" so as to make that word, as regards the respective statutes, embrace ways and places which would not otherwise come within it. A way or place being ascertained to be a "street," by means of the interpretation clause, the question then remains as to whether more than the roadway is included; and that, as before explained, will depend on the context to the word in the clause that has to be construed. It may be added that the object of the interpretation clauses being to enlarge the meaning, a turnpike road, or any part of it (notwithstanding an exception in the interpretation), will be a "street," if in fact it is a street within the ordinary meaning of that word (*R. v. Fullford inf.*; *Nutter v. Accrington sup.*; *Thomas v. Roberts* 43 J.P. 574).

(14) "Street or place" (London Hackney Carriage Act 1831 (c. 22), s.35) meant a public street or place (*Case v. Storey* L.R. 4 Ex. 319). See also *Hunt v. Morgan* [1949] 1 K.B. 233, cited PLACE. See PLACE; PLY.

(15) (a) "Street or public place": see *Tunbridge Wells v. Baird sup.*, also cited PUBLIC PLACE.

(b) "Street or public place within the limits of the Metropolitan Police District" (Metropolitan Police Act 1839 (c. 47), s.60) included, as to acts comprised in subs. (4), premises not actually in a street or public place (*Howard v. Daniels* 93 L.T. 669).

(16) Where a private Act used the phrase "street or road," "street" was held to be deprived of its larger interpretation by being so associated with "road" (*Bristol Waterworks Co. v. Bristol* 5 T.L.R. 203).

(17) A statement in particulars of sale that the property sold abutted on a named "street" was held not to import that the "street" was a public highway (*Barnes v. Cadogan Developments Ltd.* [1930] 1 Ch. 479).

(18) It has formerly been held that whether any given roadway is a "street" is a question of fact for the jury or the justices (*R. v. Fullford* 33 L.J.M.C. 122; *R. v. Dayman* 26 L.J.M.C. 128; *Maude v. Baildon* 10 Q.B.D. 394). But in *Portsmouth v. Smith* 13 Q.B.D. 196, Brett M.R., said, "I am unable to agree with the judgment in *Maude v. Baildon* and think that the court there was under a misapprehension as to what was decided in *R. v. Dayman*" (see *Portsmouth v. Smith* in H.L., 10 App. Ca. 364; see as to *Maude v. Baildon* being overruled, *Ellis v. London County Council* and *Wood v. London County Council sup.*). The justices, when called on to make an order under Public Health Act 1875 (c. 55), s.150, have jurisdiction to inquire whether the place is a "street" (*Eccles v. Wirral* 17 Q.B.D. 107).

(19) "In a street" (Street Offences Act 1959 (c. 57), s.1(1)): see *Smith v. Hughes*, cited IN, para. (14).

(20) "Street" (Control of Pollution Act 1947 (c. 40), s.62(1)). A covered market

has been held to be a "square" and therefore a "street" within the meaning of this section (*London Borough of Tower Hamlets v. Creitzman* (1984) 83 L.G.R. 72).

For a quaint use of "street": see *Termes de la Ley*, *Stallage*, cited *STALLAGE AND PACKAGE*.

Street for "foot-traffic": see *TRAFFIC*; cp. *FOOT-PATH*.

As to what buildings "form," or "front to," or are "within," a street: see *FORMING*.

Land bounding a street, where a footway made: see *BOUNDING*.

As to implied grant of right of way: see *ABUT*.

Stat. Def., Public Health (Control of Diseases) Act 1984 (c. 22), s.75; Road Traffic Regulation Act 1984 (c. 27), s.6(6); Building Act 1984 (c. 55), s.126.

See *COMMENCEMENT*; *CONSTRUCTION*; *EXISTING*; *HIGHWAY*; *NEW STREET*; *PUBLIC HIGHWAY*; *SAME*; *SEWERED*; *TURNPIKE ROAD*; *VEST*. See also *CHANNEL*; *LANE*; *NAME*; *PART*; *PRIVATE STREET*; *PUBLIC STREET*; *REGULAR LINE OF STREET*; *SIDE STREET*.

STREET LIGHTING. "System of street lighting" (Road Traffic Regulation Act 1967 (c. 76), s.72(1)). There is no "system of street lighting," within the meaning of this section, on a road illuminated by lights whose primary purpose was to light a promenade near by (*Roberts v. Croxford* (1969) 67 L.G.R. 408).

STREET REFUSE. See *REFUSE*.

Stat. Def., Public Health (London) Act 1936 (c. 50), s.304(1).

STREET TRADING. (1) In Employment of Children Act 1903 (c. 45), s.13, " 'street trading' includes the hawking of newspapers, matches, flowers, and other articles; playing, singing, or performing for profit; shoe-blackening; and any other like occupation carried on in streets or public places." A person might be engaged in street trading under s.2 of the Act although he was in the employment of another person. That section in conjunction with s.13, prohibited trading where the street was used as a market place but not legitimate business between a shop and customers at their own houses: see *Stratford Co-operative Society v. East Ham Corporation* [1915] 2 K.B. 70; *Morgan v. Parr* [1921] 2 K.B. 379. Cp. now Education Act 1944 (c. 31), s.59.

(2) A street photographer was held not to be street trading in *Newman v. Lipman* [1950] 2 All E.R. 832, but the contrary was held in *MacIver v. Robertson* 1950 S.L.T. 358. See also *STATIONARY*, para. (2).

Stat. Def., Children and Young Persons Act 1933 (c. 12), s.30; London County Council (General Powers) Act 1947 (c. xlv), s.15; Local Government (Miscellaneous Provisions) Act 1982 (c. 30), Sched. 4, para. 1.

STREET WALKER. Is synonymous with night-walker in its meaning of "a woman walking the streets to pick up men" (*R. v. Bootie* 2 Burr. 864, 865).

STREET WORKS. A compulsory power to take land for "street works" is different from such a power to take land for a "street"; the ruling in *Galloway v. London* L.R. 1 H.L. 34, cited *STREET*, does not apply to a power to take land for "street works," which only includes land necessary for the formation of a street, and not land on its side merely required for recoupment purposes (*Donaldson v. South Shields* 68 L.J. Ch. 102, 162). See *WORKS*.

Stat. Def., Town and Country Planning Act 1947 (c. 51), s.49(6); New Streets

Act 1951 (14 & 15 Geo. 6, c. 40), s.10(1); Highways Act 1959 (c. 25), s.213; Income and Corporation Taxes Act 1970 (c. 10), s.57(12); Finance Act 1972 (c. 41), Sched. 9, para. 9.

STRENGTH. "Mechanical strength" (Electricity Regulations 1908 (No. 1312), reg. 6), covers strength apart from the strength necessary to carry electric current, *e.g.* the strength necessary to resist such pull as a workman may be likely to want to exert in carrying out such a task as freeing a jammed cable (*Gatehouse v. John Summers & Sons* [1953] 1 W.L.R. 742).

STRICT DUTY. Costs incurred by an executor who (to meet a possible charge of *devastavit*) separately defends an action brought jointly against residuary legatees and himself, are not "an outlay in the strict line of his duty" within the rule (Lewin (15th ed.), 403), entitling him to reimbursement by his cestui que trust (*Hosegood v. Pedlar* 66 L.J.Q.B. 18).

See DUTY.

STRICT ENTAIL. "Where lands are directed to be settled on A and his heirs 'in strict entail,' there seems little doubt that A ought to be made tenant for life only" (3 Jarm. (7th ed.) 1838, citing *Graves v. Hicks* 5 L.J.K.B. 142; *Woolmore v. Burrows* 1 Sim. 526); and, as it should seem, "with remainder to his first and other sons successively in tail general, with remainder to his daughters as tenants in common in tail general, etc." (Lewin (15th ed.) 74, citing *Sealey v. Stawell* Ir. R. 9 Eq. 499).

See STRICT SETTLEMENT; CLOSELY ENTAILED; ENTAIL.

STRICT LIABILITY. "Strict liability rule." Stat. Def., Contempt of Court Act 1981 (c. 49), s.1.

STRICT SETTLEMENT. (1) As to what this phrase means and what limitations would be inserted in the execution of a direction for a "strict settlement": see *Douglas v. Congreve* 8 L.J. Ch. 55; *Bankes v. Le Despencer* 12 L.J. Ch. 293; 2 Jarm. (8th ed.) 903 *et seq.*; see *ibid.* 701, as to annexing personalty to realty in strict settlement.

(2) In the common form of a settlement pursuant to a direction for a "strict settlement," the tenant for life would not be made punishable for waste (*per* Wood V.-C., *Davenport v. Davenport* 33 L.J. Ch. 33, 36; but see Lewin (15th ed) 74); "but where a life estate is clearly given by the words of the executory trust, the court will not make such life estate unimpeachable for waste" (3 Jarm. (7th ed.) 1840, note (g), citing *Davenport v. Davenport* sup.; *Stanley v. Coulthurst* L.R. 10 Eq. 259). See WITHOUT IMPEACHMENT OF WASTE.

(3) Where a will of personalty directed "the girls' shares to be settled on themselves strictly," Romilly M.R., held that the income of each share should, during the joint lives of one of the "girls" and her husband, be paid to her for her life, for her separate USE and without power of anticipation; and if she died first, her share to go as she should by will appoint, or, failing appointment, to her next of kin, but if she survived her husband, then her share to be for herself absolutely (*Loch v. Bagley* L.R. 4 Eq. 122).

See SETTLEMENT; STRICT ENTAIL.

STRIKE. (1) "There is no authority which gives a legal definition of the word 'strike'; but I conceive the word means a refusal by the whole body of workmen to

work for their employers, in consequence of either a refusal by the employers of the workmen's demand for an increase of wages, or of a refusal by the workmen to accept a diminution of wages when proposed by their employers" (*per* Kelly C.B., *King v. Parker* 34 L.T. 889), or, *semble*, such a refusal in consequence of any dispute between masters and men relating to the employment; in short, "a 'strike' is properly defined as a simultaneous cessation of work on the part of the workmen" (*per* Hannen J., *Farrer v. Close* L.R. 4 Q.B. 612). A general strike is illegal (*National Seamen's and Firemen's Union of Great Britain and Ireland v. Reed* [1926] Ch. 536).

(2) "Strike or other industrial action" (Trade Union and Labour Relations Act 1974 (c. 52), Sched. 1, para. 8). Workmen who crowded round a newly installed machine for the purpose of preventing its proving operation taking place, and who refused to return to their places of work when ordered, were taking part in a "strike or other industrial action" (*Thompson v. Eaton* [1976] I.C.R. 336).

(3) An excuse for delay in fulfilling a contract on the ground of a "strike" by workmen means a strike against the employer; not a mere refusal to work because an infectious disease is prevalent, or the weather is hot or wet, or such like excuse (*Stephens v. Harris* 57 L.J.Q.B. 203; *Re Richardsons and Samuel* 66 L.J.Q. 868, cited LOCK-OUT). See *Re Allison and Richards* 20 T.L.R. 584, cited CONTROL; *Steel v. Grand Canary Coaling Co.* 20 T.L.R. 542, cited STOPPAGE.

(4) An exception as to lay days, in a charterparty, of "strikes of workmen," does not exonerate the charterers from liability for delay if, by any reasonable efforts, they can take delivery, even though there be a strike at the port of discharge (*Bulman v. Fenwick* [1894] 1 Q.B. 179). Cp. *Dobell v. Green* [1900] 1 Q.B. 526, cited AS ORDERED; DETENTION BY ICE; DETENTION BY RAILWAYS. See CUSTOMARY; *Saxon S.S. Co. v. Union S.S. Co.* 68 L.J.Q.B. 58, cited COLLIERY WORKING DAY; *Hick v. Raymond* [1893] A.C. 22, and *Carlton S.S. Co. v. Castle Co.* [1898] A.C. 490–492, cited REASONABLE; *Budgett v. Binnington* [1891] 1 Q.B. 35, cited DEMURRAGE. See hereon *Hoyle v. Oldham* [1894] 2 Q.B. 372; *Allen v. Flood* [1898] A.C. 1, cited MALICE.

(5) A concerted agreement by a crew refusing to sail on the ground that they would be exposed to the danger of being sunk by German war vessels is a "strike" within a term in a charterparty: see *Williams Bros. Ltd. v. Naamlooze Vennootschap Berghuys Kolenhandel* 86 L.J.K.B. 334.

(6) The concerted refusal by workmen to work on a customary 24-hour shift basis, so as to get improvements in terms and conditions of work, was held to be a "strike" within the meaning of an exception clause in a charterparty, even where it was discontinuous and not in breach of contract. (*Tramp Shipping Corporation v. Greenwich Marine Incorporate* [1975] I.C.R. 261).

(7) "Taking part in a strike": see *Smith v. Wood* 43 T.L.R. 179.

Stat. Def., Employment Protection (Consolidation) Act 1978 (c. 44), Sched. 13 (24); Trade Union Act 1984 (c. 49), s.11.

See BOYCOTT; INTIMIDATE; LAWFUL PURPOSE; SUDDEN; TRADE UNION.

STROKEHALL. Stat. Def., Salmon and Freshwater Fisheries Act 1923 (13 & 14 Geo. 5, c. 16), s.1(3).

Cp. FIXED ENGINE.

STRONG. See TIGHT.

With strong hand: see FORCE.

"Strong presumption": see PRESUMPTION.

STRUCTURAL ALTERATION. (1) “Structural additions to . . . buildings” (Settled Land Act 1925 (c. 18), Sched. III, Pt. II, para (v)) were held to include a range of buildings, consisting of glasshouses, garages, a chauffeur’s flat, engine-room, battery-room, boiler-house, workshop and potting shed built by a tenant for life about thirty to fifty feet behind the principal house, and with it, forming one domestic unit (*Re Insole’s Settled Estate* [1938] Ch. 812).

(2) As to “structural alteration” within s.72, Licensing Act 1910 (c. 24), see *Smith v. Portsmouth Justices* [1906] 2 K.B. 229, cited ALTERATION; *Marshall v. Spicer* 103 L.T. 902.

(3) “Structural alterations” (Factory and Workshop Act 1901 (c. 22), s.101(8)), see *Horner v. Franklin* [1905] 1 K.B. 479, and *Stuckey v. Hooke* [1906] 2 K.B. 20, cited OUTGOING.

(4) “Structural alterations” (Building (Safety, Health and Welfare) Regulations 1948 (No. 1145), reg. 2) include the installation of a lavatory, washbasins and piping in a building (*O’Haire v. Robert Rowe and Son Ltd.* 1961 S.L.T. (Notes) 18).

(5) “Structural alteration” (Housing Act 1974 (c. 44), Sched. 8, para. 1(2)). The installation of a central heating system amounted to a “structural alteration” and therefore an “improvement” within the meaning of this paragraph (*Pearlman v. Keepers and Governors of Harrow School* [1979] Q.B. 56).

STRUCTURAL CONVENIENCE. “Want of structural convenience” (Public Health Act 1875 (c. 55), s.94; but cp. Public Health Act 1936 (c. 49), s.93): see *Kinson Co. v. Poole* [1899] 2 Q.B. 41, on which see *Wilkinson v. Landoff* [1903] 2 Ch. 695, and *Wincanton v. Parsons* [1905] 2 K.B. 34, cited SEWER. There is no nuisance attributable to want of, or defect in, a “structural convenience,” if it arises from the want of proper cleansing (*Barnett v. Laskey* 68 L.J.Q.B. 57, cited CLEANSE).

STRUCTURAL DIVISION. See separate occupation; house.

STRUCTURAL EXPENSES. See expenses.

STRUCTURAL REPAIRS. For a consideration of the meaning of the words “structural repair” in the clause of a lease, see *Granada Theatres v. Freehold Investment (Leytonstone)* [1959] Ch. 592.

STRUCTURALLY. (1) “Structurally deficient,” “structurally unsuitable”: see *R. v. Dodds* [1905] 2 K.B. 40, cited RENEWAL.

(2) “Structurally detached” (Leasehold Reform Act 1967 (c. 88), s.2(2)) must be construed as meaning “detached from any other structure.” So that premises which extend over a lock-up garage let to a neighbour are not structurally detached from it (*Parsons v. Viscount Gage* [1974] 1 W.L.R. 435).

STRUCTURE. (1) In its ordinary sense, means something which is constructed in the way of being built up as is a building (*South Wales Aluminium Co. v. Neath Assessment Committee* [1943] 2 All E.R. 487).

(2) Although the question what is a structure is a question of fact, the question what is a structure within the meaning of a particular statute or regulation is a mixed question of law and fact (*Hobday v. Nicol* 113 L.J.K.B. 264).

(3) (a) In Metropolis Management Acts, “no special meaning can be given to the

word 'structure' or 'erection' as something distinct from a 'building' " (*per* Pollock B., *London County Council v. Pearce* [1892] 2 Q.B. 111). Therefore, "any wooden structure or erection of a moveable or temporary character" (London Building Act 1894 (c. ccxiii), s.84) did not include a builder's pay office running on wheels so as to be moveable from place to place as occasion required (*ibid.*), nor a steam roundabout caravan and shooting gallery (*Hall v. Smallpiece* 59 L.J.M.C. 97; see also *London County Council v. Humphreys* [1894] 2 Q.B. 755). As to the proviso to this section, see *London County Council v. Candler* 60 L.J.M.C. 114, cited *USE*.

(b) A stand constructed of wood, except its nails, for enabling spectators to view a street procession was a "wooden structure" within London Building Act 1894 (c. ccxiii), s.84; it was not a "building or structure of a temporary character," within s.83 (*Westminster Council v. London County Council* [1902] 1 K.B. 326). As to notices to district surveyor in respect of wooden structures, under s.84, see *Westminster v. Watson* [1902] 2 K.B. 717.

(c) In London Building Act 1894, there was no general statutory definition of "structure," and probably no complete definition could be given, but generally in this Act it connoted something of a permanent nature, *e.g.* "structure or work" (ss.78, 145) did not include the temporary seating of a completed building; so, of "structure," s.82; but probably in s.83 and Pt. III, "structure" had a wider meaning (*Venner v. McDonnell* [1897] 1 Q.B. 421, followed in *Handover v. Meeson* 67 J.P. 313; see also *Elliott v. London County Council* [1899] 2 Q.B. 277, cited *TRAFFIC*). As regards dangerous structures, Pt. IX, *ibid.*, " 'structure' includes any building, wall, or other structure, and anything affixed to or projecting from any building wall or other structure" (s.102). As to the powers of the county council under Pt. IX, see *Crisp v. London County Council* [1899] 1 Q.B. 720.

(d) As to what was a dangerous structure within the meaning of ss.103, 106, and 107, see *London County Council v. Jones* [1912] 2 K.B. 504. See *PARTY STRUCTURE*; *PIER*.

(e) A reservoir built of brick and concrete which in some portion projected above the surface of the ground was held to be a "building or structure" within the meaning of London Building Act 1894, s.138 (*Moran v. Marsland* [1909] 1 K.B. 744).

(f) A street box (constructed under their powers by an electric lighting company) built of brick under the pavement of a street and large enough to admit a man, was a "building or structure or work" within London Building Act 1894, s.145 (*Charing Cross & Strand Electricity Corporation v. Woodthorpe* 88 L.T. 772, following *Whitechapel v. Crow* 84 L.T. 595); but a temporary wooden flooring put into a swimming bath so as to convert it into a hall, was not within the phrase (*Handover v. Meeson* *sup.*; *City of London Electric Supply Co. v. Perkins* 52 S.J. 281).

(g) In London Building Act 1894, Pt. III, relating to the general line of buildings, the phrase, *e.g.* in s.22, was "building or structure"—"structure," in such a collocation was coloured by its association with "building," and, accordingly, a glass and iron portico or shelter dovetailed into a building and resting on the ground, was such a "structure" (*Coburg Hotel v. London County Council* 81 L.T. 450), so, of a bow window or greenhouse (*per* Kennedy J., *London County Council v. Illuminated Advertisements Co.* *inf.*). But an illuminated advertisement case affixed to a building, yet without much difficulty, removable therefrom and not intended to be part of it, was not in the nature of a building so as to be a "structure" within this part of the Act; and, *semble*, still less could it be said that affixing of such a case was to "bring forward" a "building or structure" within s.200(3) (a) (*London County Council v. Illuminated Advertisements Co.* [1904] 2 K.B. 886, followed in *London County Council v. Hancock* 76 L.J.K.B. 526; *cp.* *Hull v. London County Council*

[1901] 1 K.B. 580, and *London County Council v. Schewzik* [1905] 2 K.B. 675, cited PROJECTION). It is doubtful whether a hoarding on the top of a boundary wall was a "structure" within s.22 (*Tunmer v. Partington* 68 J.P. 318).

(h) A "building, structure, or erection," London Building Act 1894 (c. ccxiii), s.22 must be one on a space theretofore vacant; and a new building, etc., erected on the site of an old one recently pulled down, is not within the section (*Auckland v. Westminster*, 41 L.J. Ch. 723; see also *Barlow v. St. Mary Abbots*, 11 App. Cas. 257). A magisterial finding that a small conservatory over a projecting shop-front is not within this section was not over-ruled (*St. George, Hanover Square v. Sparrow*, 33 L.J.M.C. 118). But though the mere raising an existing frontage wall is not within the section, yet it is otherwise if the space between the top of such raised wall and the house it encloses is roofed over (*Clark v. St. Pancras*, 34 J.P. 181). A fence, if merely a reasonable delimitation of property, is not within the section; *secus*, if it is (or is made) more than that and has the character of a building, structure or erection (*Ellis v. Plumstead*, 68 L.T. 291). A mere WALL is not a building, structure or erection, within the section (*Wendon v. London County Council* [1894] 1 Q.B. 812); but, even as regards a wall, it is a question of degree, and if it be used, or intended, for an advertisement-station, it is within the section (*Lavy v. London County Council* [1895] 2 Q.B. 577; cp. *Foster v. Fraser*, *supra*, and *Slaughter v. Sunderland*, *infra*).

(j) A car shelter is a "structure" within s.22 of the London Building Act 1930 (20 & 21 Geo. 5, c. clviii) (*L.C.C. v. Tann* [1954] 1 W.L.R. 371).

(k) Scaffolding erected to support seating for a theatrical performance has been held to be a "structure" for the purposes of s.30 of the London Building Acts (Amendment) Act 1939 (c. xcvi) (*Thomas v. Benjamin Scaffolding Contracts* (1980) 79 L.G.R. 702).

(4) An advertising sign of sheet metal nailed to the outside of a frame which was put on a wall did not constitute "a wooden or other structure or erection," within s.18(1) of the Manchester Corporation Act 1891 (c. ccvii) (*Borough Billposting Co. v. Manchester Corporation* [1948] 1 All E.R. 807).

(5) A model railway and a model building are either a "structure" or an "erection" within s.119(1) of the Town and Country Planning Act 1947 (c. 51) (*Buckinghamshire County Council v. Callingham* [1952] 2 Q.B. 515).

(6) "Buildings or structures or in the nature of buildings or structures" (Plant and Machinery (Valuation for Rating) Order, 1927 (No. 480), Sched., class 4); tilting furnaces and mains are within the phrase (*Cardiff Rating Authority v. Guest, Keen, Baldwins Iron and Steel Co.* [1949] 1 K.B. 385); so are rotating cylinders with their supporting rollers (*British Portland Cement Manufacturers v. Thurrock Urban District Council* 66 T.L.R. (Pt. 2) 1003); and baking ovens (*Burton v. Ogdens* (Brighton) 45 R. & I.T. 470). "It is, I think, characteristic of a structure that it is built up of component parts on the site. But a thing may be in the nature of a structure, even though it is not built up on the site, but is brought there all in one piece" (*per Denning L.J.*, in *B.P. Refinery (Kent) v. Walker*).

(7) The words "a structure which is of a kind similar to structures such as referred to in paragraph (a), paragraph (b) or paragraph (c) of this section" (Rating and Valuation (Miscellaneous Provisions) Act 1955 (c. 9), s.9(1)(d) now General Rate Act 1967 (c. 9), s.45) mean a "structure" the purposes or adaptability or use which are similar to those referred to in paragraphs (a), (b) and (c) of the section (*Jewish Blind Society Trustees v. Henning* [1961] 1 W.L.R. 24). The word "structure" in s.9(1)(c), exempting from rating structures used for welfare arrangements for the handicapped, embraces every type of building and is not limited to mere adjuncts

or annexes to the principal building on the hereditament (*Almond v. Birmingham Corporation* [1968] A.C. 37).

(8) "Structure or erection" (Town and Country Planning (Control of Advertisements) Regulations 1969 (No. 1532), reg. 2) includes the canopy over the petrol pumps on a garage forecourt (*Heron v. Coupe* [1973] 1 W.L.R. 502).

(9) "Alteration of structure": see *Somerville v. Dick* 39 Sc. L.R. 836, cited ALTERATION. Cp. *Whyte v. Bruce* 37 Sc. L.R. 617, cited ERECT.

(10) "Structures used in connection with buildings," in Finance Act 1910 (c. 35), s.25(2): see *Waite's Exors. v. Inland Revenue Commissioners*, *Morrison v. Inland Revenue Commissioners* [1914] 1 K.B. 196, cited BUILDING. A road might be a structure within this subsection; see *Inland Revenue Commissioners v. Smyth* [1914] 3 K.B. 406.

(11) "Structure" (Engineering Construction (Extension of Definition) Regulations 1960 (No. 421), reg. 3) can include a crane, whether mobile or not, and whether or not it also constitutes plant (*British Transport Docks Board v. Williams* [1970] 1 W.L.R. 652).

(12) The words "structure and exterior of the dwelling-house" in the Housing Act 1961 (c. 65), s.32(1) were not to be construed as extending to a yard at the rear of a house not providing the main access thereto (*Hopwood v. Cannock Chase District Council* [1975] 1 W.L.R. 373). But the roof above the top floor flat is capable of being part of the "structure and exterior" of the dwelling comprising the flat within the meaning of this section (*Douglas-Scott v. Scorgie* [1984] 1 All E.R. 1086).

(13) "Structure" (Highways Act 1980 (c. 66), s.143). A caravan if deposited on the highway verge for a considerable period of time could be a "structure" within the meaning of this section (*R. v. Welwyn Hatfield District Council, ex p. Brinkley* [1983] J.P.L. 378).

(14) "Structure" (Control of Pollution (Licensing of Waste Disposal) Regulations 1976 (No. 732)). A landscaped river garden, which incorporated substantial amounts of land fill, and which involved the reinforcement and building up of the river bank, was capable of being a structure within the meaning of reg. 4(1)(a) of these Regulations (*Oxfordshire County Council v. Millsom*, *The Times*, April 24, 1985).

For decisions as to what can be considered as "plant" as opposed to "structure" in the rating and revenue statutes, see PLANT.

Stat. Def., London Building Act (Amendment) Act 1935 (c. xcii), s.4(4); General Rate Act 1967 (c. 9), s.28(5); Highways Act 1980 (c. 66), ss.143(4), 291(4).

"Structure or erection." Stat. Def., Health and Safety at Work Act 1974 (c. 37), s.74. Building Act 1984 (c. 55), s.121.

See BUILDINGS; ERECTION.

STUBBLE. See STRAW.

STUFF. See HOUSEHOLD.

STURDY BEGGAR. See VAGABOND.

STURGES-BOURNE'S ACTS. Vestries Act 1818 (c. 69).

Poor Relief Act 1819 (59 Geo. 3, c. 12).

SUB-CONTRACTOR. See **CONTRACTOR**.

SUB-FREIGHT. “Lien on sub-freights”: see *Tagart v. Fisher* [1903] 1 K.B. 391.

SUBINFEUDATION. Subinfeudation was a grant by an inferior feudatory lord of a part of his land to be held by feudal services as of himself, and not as of the lord paramount (2 Bl. Com. 91). The practice was finally stopped by the statute *Quia emptores*, 18 Edw. 1, c. 1. See *Holliday* [1922] 2 Ch. 698, in which the whole question of subinfeudation was discussed.

SUBJACENT. See **ADJACENT**.

Subjacent minerals: see **SURFACE**; *Fletcher v. Lancashire & Yorkshire Railway* [1902] 1 Ch. 909; *Re Bwllfa, etc., Collieries and Pontypridd Waterworks Co.* [1901] 2 K.B. 805, and *Richard v. Great Western Railway* [1905] 1 K.B. 68, cited **POSSESSION**; *Great Northern Railway v. Inland Revenue Commissioners* [1899] 2 Q.B. 652, cited **RELEASE**.

SUBJECT. (1) Notwithstanding his dispossession by the Commonwealth, and even during its days, Charles the Second was King of England, and the people of England were his “subjects,” within 34 & 35 Hen. 8, c. 20 (*Robinson v. Giffard* [1903] 1 Ch. 865, cited **SERVICE**).

(2) The fact that a person was born in a British colony did not make him a “subject” of that colony so as to make a judgment recovered against him, in his absence, in the colonial court, enforceable in this country: see *Gavin, Gibson & Co. Ltd. v. Gibson* [1913] 3 K.B. 379.

See **BRITISH SUBJECT**; **LIBERTY OF THE SUBJECT**; **ORIGINAL SUBJECT**.

SUBJECT AS AFORESAID. As to the effect of this phrase on a residuary devise or bequest, see *Booth v. Coulton* 5 Ch. 684; *Re Boden* [1907] 1 Ch. 132, cited **CONTINUING CHARGE**. This phrase will often create a charge; see *Re Wilkinson* [1910] 2 A.C. 216, cited **GENERAL POWER**; *Re Howarth* [1909] 2 Ch. 19, cited **SUBJECT TO**. See also **SUBJECT TO**.

See *R. v. Local Government Board* 15 Q.B.D. 70.

SUBJECT AS HEREAFTER PROVIDED. (Finance (No. 2) Act 1939 (c. 109), s.12), this meant “as hereafter provided in the relevant part of the Act and not in that particular section” (*English Sewing Cotton Co. Ltd. v. Inland Revenue Commissioners* [1947] 1 All E.R. 679).

SUBJECT-MATTER. (1) The “subject-matter,” as regards the county court scales of costs, is, in an interpleader action, the value of the whole goods claimed, and (if any) the damages (*Studham v. Stanbridge* [1895] 1 Q.B. 870).

(2) “Subject-matter of the dispute” (Legal Aid and Advice Act 1949 (c. 51), s.4(3) and Legal Aid (Assessment of Resources) Regulations 1950 (No. 1358), reg. 2) has been held not to include alimony *pendente lite* (*Taylor v. National Assistance Board* [1958] A.C. 532).

(3) “Subject-matter insured” (Marine Insurance Act 1906 (c. 41), s.60(1)): see *Sanday & Co. v. British & Foreign Marine Insurance Co.* [1916] A.C. 650, cited **RESTRAINTS OF KINGS**; see also *Dunlop Bros. & Co. v. Townend* [1919] 2 K.B. 127.

SUBJECT THERETO. "The ordinary and grammatical construction of 'and subject thereto' is that it refers to the immediate antecedent in the same sentence" (*per* Lord Wensleydale *Gray v. Golding* 2 L.T. 198).

See **SUBJECT TO**.

SUBJECT TO. (1) There is a marked distinction between a testamentary gift "for," and one "subject to," a particular purpose. If the particular purpose fail, then, if the gift be "for" that purpose, there will be a resulting trust for the heir or next of kin, as the case may be, or (where there is a residuary clause) the gift will fall into the residue; *secus*, if the gift be "subject to" the purpose (*per* Eldon C., *King v. Denison* 1 V. & B. 272; see also Lewin (15th Ed.), 133, and cases there cited). But "for" has been read "charged with" (*Abrams v. Winship* 3 Russ. 350; see hereon 2 Jarm. (8th ed.) 718).

(2) (a) "Where lands are devised to trustees 'subject to,' or 'charged with,' the payment of a yearly sum of money, a legal rent-charge is, it seems, created (*Buttery v. Robinson* 4 L.J.O.S.C.P. 108; *Ramsay v. Thorngate* 18 L.J. Ch. 238). But where real and personal property together are so given, it is a personal annuity (*Taylor v. Martindale* 10 L.J. Ch. 339; *Parsons v. Parsons* L.R. 8 Eq. 260), unlike rent reserved on a demise of realty and chattels, which issues out of the land alone (*Farewell v. Dickinson* 6 B. & C. 251)" (2 Jarm. (8th ed.) 1132, 1133).

(b) A devise of lands "subject to and charged with" a rent-charge or annuity, charges the corpus of the land with the charge or annuity; and, in a proper case, the court will order arrears to be raised by mortgage of the lands (*Re Tucker* [1893] 2 Ch. 323). So, of the bequest of an annuity out of a fund and "subject thereto" the fund to be held upon trusts (*Birch v. Sherratt* 2 Ch. 644; *Re Howarth* [1909] 2 Ch. 19; *Re Watkins* 80 L.J. Ch. 102). See also **SUBJECT AS AFORESAID**.

(3) (a) Formerly, "subject to" a mortgage or charge, in a devise of lands, were simply descriptive words, and did not indicate that the devisee was to take *cum onere* (*Serle v. St. Eloy* 2 P. Wms. 386, on which see *Mellish v. Vallins* 2 J. & H. 203; *Keogh v. Keogh* Ir. Rep. 8 Eq. 459, 460); but now they are treated as conditional (*Keogh v. Keogh* Ir. Rep. 8 Eq. 449; *Upton v. Hardman* 9 *ibid.* 162, 163). The rule in *Serle v. St. Eloy* was not applied to bequests of personalty; therefore, such a bequest "subject to" the payment of testator's debts imported a direction for the payment out of that personalty of mortgage debts on realty (*Mellish v. Vallins* 31 L.J. Ch. 592), and the principle of that latter case in regard to "subject to" remains, although "debts," in such a connection, does not now include mortgage debts (see **DEBTS**).

(b) Sometimes "subject to" a mortgage or charge, in a devise, will even now be regarded as descriptive (*Johnson v. Webster* 4 D.G.M. & G. 487).

(c) "Subject to the mortgage." If part of a mortgaged property is assigned, whether for value or not, expressly subject to the mortgage, that part remains liable to pay a rateable part of the mortgage money (*Re Mainwaring* [1937] Ch. 96).

(4) (a) A bequest "subject to" payment of debts, etc., does not make the legatee personally liable (*Re Cowley* 53 L.T. 494).

(b) "Subject to the payment by him." A bequest to a legatee subject to the payment by him of certain annuities, was held to impose a personal obligation on the legatee, but not also a charge on the property bequeathed (*Re Lester* [1942] Ch. 324).

(5) "Subject to the provisions contained in the will" (Administration of Estates Act 1925 (c. 23), s.49) means subject to the provisions contained in the will so far as

they are in fact effective. A provision in the will that certain royalties were to be treated as capital was therefore disregarded when in the events which happened the royalties passed on an artificially induced intestacy (*Re Sullivan* [1930] 1 Ch. 84).

(6) "Subject to the provisions contained in the previous clause" in a will: see *Re Edwards' Will Trusts* [1948] Ch. 440.

(7) In an assignment of a lease "subject to" its rent and covenants, no covenant is implied by the assignee to indemnify the assignor against the rent and covenants; the words "subject to," in that connection, being words of qualification and not of contract (*Wolveridge v. Steward* 3 L.J. Ex. 360; see thereon Woodf. (24th ed.) 524, and *Moule v. Garrett* L.R. 5 Ex. 132).

(8) Conveyance on sale "subject (either certainly or contingently) to the payment of any money or stock," is chargeable with *ad valorem* stamp duty on such money or stock (Stamp Act 1891 (c. 39), s.57); the object of that provision (like the provisions it replaces, see To BE) is "that, upon every purchase, *ad valorem* duty shall be paid on the entire consideration which, either directly or indirectly, represents the value of the free and unincumbered corpus of the subject-matter of sale" (*Mortimore v. Inland Revenue Commissioners* 33 L.J. Ex. 263, cited DEFINITE); therefore, where such subject-matter is a conveyance on sale of a leasehold, neither the entire rent nor an apportioned part of it is at all liable to *ad valorem* duty, for it is an incident of the corpus and inseparable from it (*Swayne v. Inland Revenue Commissioners* [1900] 1 Q.B. 172). See CONTINGENTLY.

(9) "Subject to" in Settled Land Act 1882 (c. 38), s.20(2) (see Settled Land Act 1925 (c. 18), s.72(2)): see *Re Dickin & Kelsall* [1908] 1 Ch. 213; upheld in *Re Davies & Kent* [1910] 2 Ch. 35, cited TRUSTEE.

(10) "Subject to an immediate binding trust for sale" within s.20(1), Settled Land Act 1925: see *Re Leigh's Settled Estates* [1926] 1 Ch. 852. But see *Re Parker's Settled Estates* [1928] 1 Ch. 247.

(11) "Subject to contract." (a) Ordinarily, if the court can see from the subject-matter and the correspondence of the parties throughout that all the essential terms of a bargain have been agreed upon and have been set down in writing (in the correspondence or otherwise), and have been signed by the party to be charged, then there is a binding contract, and the Statute of Frauds (in those cases to which it applies) has been complied with, notwithstanding that the correspondence or other writing speaks of a future formal contract to be executed between the parties (*Fowle v. Freeman* 9 Ves. 351; *Rossiter v. Miller* 3 App. Ca. 1124; *Hussey v. Horne-Payne* 4 App. Ca. 311; *Lewis v. Brass* 3 Q.B.D. 667; *Bonnewell v. Jenkins* 8 Ch. D. 70; *Chipperfield v. Carter* 72 L.T. 487; *Filby v. Hounsell* [1896] 2 Ch. 737; *North v. Percival* [1898] 2 Ch. 128). But *North v. Percival* was disapproved in *Rossdale v. Denny* [1921] 1 Ch. 57, where the phrase used was "subject to preparation of a formal contract."

(b) But when the subject-matter is the sale of realty or an interest in realty (and still more strongly when it is the granting of a lease, *per* Jessel M.R., *Winn v. Bull* 7 Ch. D. 29), then, if the letters or other informal writing contain nothing as to conditions and would simply amount to an "open" contract, and if such letters or writing say that the transaction is "subject to the preparation and approval of a formal contract," or "subject to a formal contract being prepared and signed by both parties as approved by their solicitors," or "subject to a contract to be settled," or "subject to a proper contract," or such like words, then, subject to the possible effect of the change of thought evidenced by the 1973 cases cited below, there is no concluded bargain until the prescribed contract is executed (*Winn v. Bull* 7 Ch. D. 29; *Donnison v. People's Café Co.* 45 L.T. 187; *Hawkesworth v. Chaffey* 55 L.J.

Ch. 335; *Harvey v. Barnard's Inn* 50 L.J. Ch. 750; *Brien v. Swainson* 1 L.R. Ir. 135. See also *Bromet v. Neville* 53 S.J. 321; *Santa Fé Land Co. v. Forestal Land Co.* 26 T.L.R. 534; *Von Hatzfeldt-Wildenburg v. Alexander* [1912] 1 Ch. 284; *Rossdale v. Denny* sup. See further *Coope v. Ridout* [1921] 1 Ch. 291, where the words used were "subject to title and contract" *Lloyd v. Nowell* [1895] 2 Ch. 744, can hardly be classed here, for it related to the sale of an existing lease, and it seems difficult to reconcile it with *Bonnewell v. Jenkins* sup., a case of superior authority).

(c) So, "subject to contract" prevents the document from being a concluded bargain (*Botley v. Vidal* 49 S.J. 634) See also *Watson v. McAllum* 87 L.T. 547; *Henry v. Gregory* 22 T.L.R. 53; *Clark v. Robinson* 51 W.R. 443; but see *Rouse v. Grinsberg* 55 S.J. 632. In *Lockett v. Norman-Wright* [1925] 1 Ch. 56, it was held that the phrase "subject to suitable agreements being arranged between your solicitors and mine" prevented the document from being a concluded bargain. In *Wilson v. Balfour* 45 T.L.R. 625, it was held that the sentence "I accept the above offer subject to contract" prevented the document from being a concluded bargain.

(d) "Ever since the case of *Winn v. Bull* 7 Ch. D. 29, if not long before, it has been well settled that the result of an offer 'subject to contract' means that the matter remains in negotiation until a formal contract is executed, that is, if the contract is recorded in two parts, until the formal contracts are exchanged" (*per* Maugham L.J., *George Trollope & Sons v. Martyn Bros.* [1934] 2 K.B. 436, 455). See also *Spottiswoode, Ballantyne & Co. v. Doreen Appliances Ltd.* [1942] 2 K.B. 32 ("subject to the terms of a formal agreement to be prepared by our solicitors"); *Graham and Scott (Southgate) v. Oxlade* [1950] 2 K.B. 257 ("subject to contract, satisfactory survey and vacant possession").

(e) But in *Law v. Jones* [1973] 2 W.L.R. 994 it was held that an oral agreement for the sale of land, evidenced by solicitors' letters referring to the "proposed purchase" as being "subject to contract," was a binding contract. This decision was followed in *Bass v. Gamble*, *The Times*, September 14, 1973 where it was held that, after an oral agreement to sell a house, a binding contract had been created when the vendor's solicitors wrote to the purchaser's solicitors enclosing a draft contract, even though the letter contained the phrase "subject to contract." The old position, however, seems to have been restored by *Tiverton Estates v. Wearwell*, *The Times*, November 21, 1973. In this case it was held that a document referring to the terms of an agreement "subject to contract" could not be a sufficient memorandum of its terms to satisfy s.40 of the Law of Property Act 1925 (c. 20).

(f) Save in very special circumstances the inclusion of the words "subject to contract" in an offer or acceptance, including in this case acceptance of a valuation for compulsory purchase, has the effect of preventing a binding agreement from being created at that time (*Munton v. Greater London Council* [1976] 1 W.L.R. 649). But where all the terms of a contract for the sale of land are already contained in documents and nothing remains to be negotiated, the words "subject to contract" in a letter of acceptance of tender may be meaningless and will not prevent a binding contract from arising (*Richards (Michael) Properties v. Corporation of Wardens of St. Saviour's Parish, Southwark* [1975] 3 All E.R. 416). A "subject to contract" qualification once introduced into negotiations could only cease to apply to the negotiations if the parties expressly or by necessary implication agreed that it should be expunged. Thus where an offer of a sale of a long lease "subject to contract" was refused by the tenant, and where later negotiations instituted by the tenant, resulted in an oral agreement with no reference to it being "subject to contract," it was nevertheless held that the qualification still applied (*Cohen v. Nessdale* [1982] 2 All E.R. 97).

(g) "Subject to the terms of a lease" has a meaning equivalent to subject to contract (*Raingold v. Bromley* [1931] 2 Ch. 307).

(h) So, if it is stated in so many plain and express terms that there shall be no concluded bargain until the formal contract is executed between the parties, then such formal contract is essential (*Chinnock v. Ely* 34 L.J. Ch. 399; *per* Lord Hatherley, *Rossiter v. Miller* *sup.*).

(i) So, where the acceptance of an offer is accompanied by written conditions constituting further terms, the acceptance is not final (*Crossley v. Maycock* L.R. 18 Eq. 180; *Jones v. Daniel* [1894] 2 Ch. 332).

(j) So, the conduct of the parties—*e.g.* correspondence subsequent to letters which in themselves would have created a concluded bargain but which subsequent correspondence treats the matter as still the subject of negotiation—may show that there has been no concluded bargain (*Hussey v. Horne-Payne* 4 App. Ca. 311; the opposite dictum of Cotton L.J., in *Bolton v. Lambert* 41 Ch. D. 295, is not well founded, *per* Kay J., *Bristol Aerated Bread Co. v. Maggs* 44 Ch. D. 616; see also *May v. Thompson* 20 Ch. D. 705; *Bellany v. Debenham* [1891] 1 Ch. 412). Asking the other party to say from what time "the purchase is to date" does not re-open an otherwise concluded bargain (*Simpson v. Hughes* 66 L.J. Ch. 334).

(k) See also, as to when a contract is completed by a correspondence, *per* Plumer V.-C., *Stratford v. Bosworth* 2 V. & B. 341; *per* Jessel M.R., *Williams v. Brisco* 22 Ch. D. 448; *per* Kekewich J., *Wylson v. Dunn* 34 Ch. D. 576; *Clack v. Wood* 9 Q.B.D. 276; *Livingstone v. Ross* [1901] A.C. 327; *Lever v. Koffler* [1901] 1 Ch. 543; Woodf. (24th ed.) 143–145.

(l) "Subject to formal contract to be prepared by the vendor's solicitors if *the vendors shall so require*," the words in italics were held to refer to the preparation of the formal contract by the vendor's solicitors; as there had been no formal contract prepared there was no binding agreement (*Riley v. Troll* [1953] 1 All E.R. 966). See also *Chillingworth v. Esche* [1924] 1 Ch. 97; *Lockett v. Norman-Wright* [1924] W.N. 281.

(m) A document describing property and purporting to sell it "subject to survey," when signed by both parties becomes an effective and valid contract for the sale of land. "Subject to survey" is a condition precedent which, not being void for uncertainty, was perfectly valid (*Ee v. Kakar* (1979) 40 P. & C.R. 223).

(12) "Subject to safe arrival." These words in a contract for the sale of goods do not protect the vendor in case of non-delivery if his failure to deliver the goods was due to his being unable to procure them from his own vendor: see *Barnett v. Javeri & Co.* [1916] 2 K.B. 390.

(13) (a) "Subject to *force majeure*" for the construction of these words in a contract: see *Lebeaupin v. Richard Crispin & Co.* [1920] 2 K.B. 714.

(b) A contract of sale "subject to *force majeure* and shipment" meant that the contract was conditional upon the sellers not being prevented by circumstances amounting to *force majeure* from carrying it out, and conditioned upon the seller being able to procure the goods to be sold. It did not enable them to excuse their failure to deliver by reference to their other commitments (*Hong Guan & Co. v. Jumabhoy (R.) & Sons* [1960] A.C. 684).

"Subject to insurance": see FREIGHT IN ADVANCE TO INSURANCE.

(14) (a) A re-insurance "subject to," or "with the same," terms as another policy, incorporates those terms (*General Insurance of Trieste v. Royal Exchange Assurance* 2 Com. Ca. 144; *Walker v. Uzielli* 1 *ibid.* 452).

(b) "Subject to the same conditions as the original policy" in a marine insurance

policy: see *Norwich Union Fire Insurance Society v. Colonial Mutual Fire Insurance Co.* 91 L.J.K.B. 881.

(c) Subject to a malady, in a life policy, means to be liable to it (*Chattock v. Shawe* 1 Moo. & R. 498). Cp. AFFLICTED.

(15) (a) "Subject to the laws and statutes now in force": see *R. v. St. James, Westminster* 5 A. & E. 391.

(b) "Subject to any legal objection" (Arbitration Act 1889 (c. 49), s.2, Sched. 1, para. (f)): see *Re La Société des Affréteurs Réunis and the Shipping Controller* [1921] 3 K.B. 1. See now Arbitration Act 1950 (c. 27), s.12(1).

(16) A condition precedent making a contract for the sale of land "subject to satisfactory mortgage" renders the contract void for uncertainty (*Lee-Parker v. Izzet* (No. 2) [1972] 1 W.L.R. 775).

(17) "Subject to the provisions of this Act" (Judicature Act 1873 (c. 66), s.19—see Judicature Act 1925 (c. 49), s.27): see *Ormerod v. Todmorden* 8 Q.B.D. 664.

(18) (Transport Act 1947 (c. 49), s.2(1)): see *Smith v. London Transport Executive* [1951] A.C. 555. See also *Massey-Harris Co. v. Strasburg* [1941] 4 D.L.R. 420.

(19) "Subject to the ratification of the court": see *Stewart v. Kennedy* 15 App. Ca. 108, cited RATIFY.

(20) Appointment of fishery officers "subject to restrictions, etc., as to expenditure" (Sea Fisheries Regulation Act 1888 (c. 54), s.6(1)) implied such restrictions as were made at the time of the appointment (*R. v. Plymouth* [1896] 1 Q.B. 158).

(21) "Subject to shipment, any goods not shipped to be cancelled": see *Hollis Brothers & Co. v. White Sea Timber Trust* [1936] 3 All E.R. 895.

(22) Gift to a charity "subject to my trustees being made members or governors": see *Re Emson* 74 L.J. Ch. 565.

(23) "Subject to war clause." Where an order for goods was accepted "subject to war clause" and the court found that there are many varieties of war clause, it was held that no contract had been concluded (*Bishop & Baxter Ltd. v. Anglo-Eastern Trading & Industrial Co. Ltd.* [1944] K.B. 12).

(24) "Money subject to be invested in the purchase of lands" to be entailed (Fines and Recoveries Act 1833 (c. 74), s.71); see thereon s.1, *ibid.*; "subject to" meant at any future time subject to, as well as money immediately subject to, be so invested (*Re Harvey* [1901] 2 Ch. 290, applying *Fordham v. Fordham* 34 Bea. 59). Cp. LIABLE.

(25) "Subject to and with the benefit of the lease": see *Davenport v. Smith* 91 L.J. Ch. 225, distinguished in *Atkin v. Rose* 92 L.J. Ch. 209.

Subject a spirit cask "to any process": see EXTRACT.

"Subject to average", see AVERAGE.

SUBJECTION. "The subjection of goods and materials to any process" (Income Tax Act 1952 (c. 10), s.271(1) (c), Capital Allowances Act 1968 (c. 3), s.7(1) (e)) was held not to include the cremation of human remains (*Bounce v. Norwich Crematorium* [1967] 1 W.L.R. 691).

SUB-LEASE. See UNDERLEASE; LEASE. See also *Gray v. Bonsall* [1904] 1 K.B. 601, cited LEASE.

SUB-LESSEE. See *Keith v. Twentieth Century Club* 73 L.J. Ch. 549, cited FRIEND.

SUB-LET. (1) (Increase of Rent and Mortgage Interest Restrictions (Continuance) Act 1923 (c. 7), s.2): see *Doulin v. Parcell* 43 T.L.R. 140. See also ASSIGN.

(2) A covenant against sub-letting does not cover sub-letting of part of the premises (*Cook v. Shoemith* [1951] 1 K.B. 752).

(3) A covenant not to sub-let the premises demised is not broken by sub-letting only a part of them (*Esdale v. Lewis* [1956] 1 W.L.R. 709).

Stat. Def., Housing Finance Act 1972 (c. 47), s.26.

SUBMISSION. (1) In Arbitration Act 1889 (c. 49), s.27, a “ ‘submission’ means a written agreement to submit present or future differences to arbitration, whether an arbitrator is named herein or not.” “Written agreement,” there, meant a perfected agreement to which the parties were *ad idem* and which was embodied in writing, *i.e.* an agreement evidenced by the parties’ signatures (*Caerleon Tin Plate Co. v. Hughes* 60 L.J.Q.B. 640), or by which they were otherwise bound, *e.g.* an insurer by the terms of his policy on which he was suing (*Baker v. Yorkshire Insurance* [1892] 1 Q.B. 144), or a litigant by his counsel’s indorsement on his brief (*Aitken v. Batchelor* 62 L.J.Q.B. 193). See also *Re Smith and Nelson* 25 Q.B.D. 545, cited IRREVOCABLE. See also *Austrian-Lloyd S.S. Co. v. Gresham Life Assurance* [1903] 1 K.B. 249; *Hodson v. Railway Passengers Assurance* [1904] 2 K.B. 833; *Hickman v. Kent, etc., Association* [1915] 1 Ch. 881; *Clements v. County of Devon Insurance* [1918] 1 K.B. 94. The term “arbitration agreement” is used instead of the word “submission” in the Arbitration Act 1950 (c. 27).

(2) Arbitration Act 1889, s.2, was enlarged by s.25, so that “submission,” in s.2, included past as well as future agreements to arbitrate (*Re Williams and Stepney* [1891] 2 Q.B. 257; see thereon *Re Wilson and Eastern Counties Navigation Co.* [1892] 1 Q.B. 81).

(3) “Agreement or submission to arbitration by consent” (Common Law Procedure Act 1854 (c. 125), s.17): see hereon *Wadsworth v. Smith* L.R. 6 Q.B. 332; CONSENT; INSTRUMENT IN WRITING. A submission under Lands Clauses Consolidation Act 1845 (c. 18), s.25, was not within the phrase (*Re Harper and Great Eastern Railway* L.R. 20 Eq. 39, explaining *Ex p. Harper* L.R. 18 Eq. 539).

(4) Act of submission: Outlawry Act 1531 (c. 14).

SUBMIT TO. (1) “Interruption . . . submitted to” (Prescription Act 1832 (c. 71), s.4: see *Davies v. Du Paver* [1952] 2 T.L.R. 890).

(2) “Submitted to the jurisdiction” (Foreign Judgments (Reciprocal Enforcement) Act 1933 (c. 13), s.4(2)(a)(i)). A French company with branches in Paris and Lille sold goods from both branches to a company in England. The invoices provided that disputes should be referred to courts in either Paris or Lille according to the branch involved. The French company claimed payment for goods from both branches. The English company requested that the disputes be brought before the Lille court, and in doing so “submitted to the jurisdiction” of that court for the purposes of this action (*S.A. Consortium General Textiles v. Sun and Sand Agencies* [1978] Q.B. 279).

See ACQUIESCENCE; CONSENT; STANDING BY.

SUBORDINATE. (1) One who is “subordinate” to another is in the same relationship to third parties as that other; therefore, a resident engineer, who is “subordinate” to a chief engineer, is no more an agent of the contractor or contractee (*e.g.* for building works), than is the chief engineer (*Re Rio Flour Mills and De Morgan* 8 T.L.R. 108, 292).

(2) Subordinate occupation: see *per* Lord Davey, in *Holywell v. Halkyn Drainage Co.* [1895] A.C. 117, cited EXCLUSIVE OCCUPATION.

“Subordinate company.” Stat. Def., Insurance Companies Act 1982 (c. 50), s.31(4).

“Subordinate instrument.” Stat. Def., Decimal Currency Act 1969 (c. 19), s.16.

“Subordinate interest.” Stat. Def., Finance Act 1972 (c. 41), s.69(4).

SUBORNATION OF PERJURY. “Subornation of perjury is procuring a person to commit a perjury, which he actually commits in consequence of such procurement” (Steph. Cr. (9th ed.) 147). See **PERJURY**.

SUB-PURCHASER. Within the meaning of its prospectus, a company “generally speaking, is not a ‘sub-purchaser’ for the purposes of Companies Act 1929 (c. 23), Sched. IV, Pt. 1(8) (see Companies Act 1948 (c. 38), Sched. IV, Pt. 1(9)(b)), unless it has to pay purchase-money (of course, including in that debentures and shares) to someone other than its own vendor, *e.g.* the vendor or person from whom such immediate vendor purchased” (*per* Joyce J., *Brookes v. Hansen* [1906] 2 Ch. 129).

SUBROGATION. (1) (a) “‘Subrogation’ is the substitution of another person in the place of a creditor to whose rights he succeeds in relation to the debt. Personal subrogation is of two sorts, (1) conventional, and (2) legal. The difference between them in regard to the effects of subrogation in general results only from the modifications of rights which are constituted by express agreement. Subrogation differs from delegation in this respect, that it is the substitution of a new creditor; whereas delegation introduces a new debtor in the place of the former, who is discharged. Subrogation differs from a transfer or assignment of a debt, and from delegation, in the circumstance that it does not, necessarily, depend upon the creditor, but may be made independently of him. It is, properly speaking, but a fictitious cession made to one who has a right to offer payment; it is not a true cession nor sale of a debt, but such as is conceded by law and may have effect by operation of law and the act of the debtor, even without the consent of the creditor from whom the debt proceeds” (Dixon on Subrogation, 1).

(b) See hereon Pothier on Obligations, by Evans, 160, cited *Commercial Union Assurance v. Lister* 9 Ch. 485; *per* Selborne C., *Blackburn Building Society v. Cunliffe* 22 Ch. D. 70, 71; cited by Chitty J., *Neath Building Society v. Luce* 43 Ch. D. 164; *Bannatyne v. MacIver* [1906] 1 K.B. 103; *Re Wrexham, etc., Railway* [1899] 1 Ch. 440; *Re British Power Co.* 54 S.J. 749. For an example, see *Re Kensington* 29 Ch. D. 527. See also *King v. Victoria Insurance* [1896] A.C. 250; *Ecclesiastical Commissioners v. Pinney* [1900] 2 Ch. 736; *Re Denton* [1904] 2 Ch. 178, applying *Craythorne v. Swinburne* 14 Ves. 160; *Pheonix Assurance Co. v. Spooner* [1905] 2 K.B. 753.

(2) “If I desired to find an explanation of the meaning of the word ‘subrogation’ I do not think that I could do better than read the words in Workmen’s Compensation Act 1906 (c. 58), s.5” (*per* Farwell L.J., in *King v. Pheonix Assurance* [1910] 2 K.B. 666; *Pailin v. Northern Employers, etc., Co.* [1925] 2 K.B. 73).

(3) As to subrogation where a person pays off a mortgage intending to take a fresh security, which intention is thwarted, see *Patten v. Bond* 60 L.T. 583; *Chetwynd v. Allen* [1899] 1 Ch. 393, cited **MERGER**; *Butler v. Rice* [1910] 2 Ch. 277.

(4) As to creditors’ right to be subrogated to the right of trustees to be indemnified out of the trust estate when the latter (being duly authorised) have carried on a business, see *Re Frith* [1902] 1 Ch. 342, applying *Re Johnson* 15 Ch. D. 548, and *Dowse v. Gorton* [1891] A.C. 190.

(5) Insurer's right of subrogation: see Marine Insurance Act 1906 (c. 41), s.79. See hereon *Edward & Co. v. Motor Insurance Co.* [1922] 2 K.B. 249.

Cp. NOVATION.

SUBSCRIBE. (1) " 'Subscribe' means to write under something," in accordance with prescribed regulations where any such exist (*per* Brett M.R., *A.-G. v. Bradlaugh* 14 Q.B.D. 667; see also *Coon v. Rigden* 4 Colorado, 282). But though this is the strict primary meaning of the word, it may sometimes, *e.g.* in the attestation of a will, be construed as "to give assent to, or to attest" or "written upon" (*Roberts v. Phillips* 24 L.J.Q.B. 171; *Re Streatley* [1891] P. 172).

(2) An inventory was sufficiently "subscribed" by a lodger, within Lodgers' Goods Protection Act 1871 (c. 79), s.1, if it was referred to in the annexed declaration which latter was signed by the lodger (*Godlonton v. Fulham & Hampstead Property Co.* [1905] 1 K.B. 431, followed in *Lowe v. Dorling* [1906] 2 K.B. 772, cited *ILLEGAL DISTRESS*; *Rogers & Co. v. Martin* [1911] 1 K.B. 19).

(3) "Subscription is a method of signing; it is not the only method"; a stamped, or other mechanical impression of a signature is good, in the case of electioneering papers, "but I take it to be perfectly clear that such a signature should not (in Scotland) be sufficient to satisfy the conditions of the statute regulating the subscription and attestation of probative deeds" (*per* Lord Kinnear, *Whyte v. Watt* 31 Sc. L.R. 127). Cp. SIGNED. As to the exigency of a Scottish subscription, see *Re Ratray* 23 Sc. L.R. 889.

(4) "Subscribe" very frequently means to pay money; and then it means (1) to have made an actual payment, or (2) to agree to contribute (*Thames Tunnel Co. v. Sheldon* 6 B. & C. 341).

(5) "Subscription" (Companies Act 1948 (c. 38), s.455(1)) means taking or agreeing to take shares for cash, and it imports that the person agreeing to take the shares puts himself under a liability to pay the nominal amount thereof in cash. It is defined as "a promise over one's signature to pay a sum of money for shares in an undertaking" (*Government Stock and other Securities Investment Co. v. Christopher* [1956] 1 W.L.R. 237).

(6) An obligation to "subscribe for" shares does not, as a general rule, connote that they must be taken personally; the obligation will be satisfied if the obligor procures an allotment of the agreed number of shares to persons approved by the directors of the company (*Re London & Colonial Finance Corporation* 77 L.T. 146). See also UNDERWRITE.

(7) A statement in a prospectus of a company that share capital has been "subscribed" is not satisfied by the fact that fully-paid-up shares have been allotted in payment for property or services (*Arnison v. Smith* 41 Ch. D. 348). But where, in a circular inviting subscriptions for shares in a private company, it is stated that a proportion of the capital has already been "subscribed," the word "subscribed" does not necessarily mean subscribed in cash (*Akerhielm v. De Mare* [1959] A.C. 789).

(8) "Subscribe" to an undertaking (Companies Clauses Consolidation Act 1845 (c. 16), s.8): see *Burke v. Lechmere* L.R. 6 Q.B. 297.

"Attest and subscribe" a will: see ATTEST, para. (5).

See SIGNED.

SUBSCRIBER. See SHAREHOLDER.

(1) "Subscriber" (Joint Stock Companies Registration Act 1844 (s.3): see *Ex p. Cookney* 28 L.J. Ch. 12. See also Companies Act 1948 (c. 38), s.26.

(2) A right of voting, *e.g.* for a schoolmaster, given to "subscribers" is exercis-

able only by bona fide subscribers, not by those who come with their money *pro hac vice* (*Nott v. Williams* 48 W.R. 316).

SUBSCRIPTION or CONTRIBUTION. (1) A “subscription or contribution” for any plate, prize, or sum of money, to be awarded to the winner “of any lawful game, sport, pastime, or exercise” was excepted from the operation of the Gaming Act 1845 (c. 109), s.18, proviso, and was legal and irrevocable. But to be within that proviso the “subscription or contribution” must not itself have been a wager; and therefore if each of two or more persons staked money to form a fund for which they were to compete in a lawful game, *e.g.* a foot-race, that was a wager, and not a “subscription or contribution” within the proviso (*Diggle v. Higgs* 2 Ex. D. 422, overruling *Batty v. Marriott* 17 L.J.C.P. 215; see also *Trimble v. Hill* 5 App. Ca. 342). So, if two men, each owning a horse, agreed to ride a race each on his own horse and the winner to have both horses, that was not a “subscription or contribution” (*Coombes v. Dibble* L.R. 1 Ex. 248).

(2) So, if two or more persons played at a lawful game for money, but did not at the time stake the money, that was not a “subscription,” but a mere bet upon which no action would lie (*Parsons v. Alexander* 24 L.J.Q.B. 277). So, the common “sweep” on a horse-race was not within the above exception, but was a lottery and illegal (*Allport v. Nutt* 1 C.B. 989; *Gatty v. Field* 9 Q.B. 431). See also *Hardwick v. Lane* [1904] 1 K.B. 204.

See GAMING CONTRACT; VOLUNTARY CONTRIBUTIONS; LOTTERY.

SUBSEQUENT. As to the value of this word in a covenant, in a marriage settlement, to settle after-acquired property: see *Re Garnett* 33 Ch. D. 300.

“Each subsequent £100 of rent”: see EACH.

Cp. SUCCEEDING.

SUBSEQUENT ACTION. (1) A second action commenced after the issue of the writ but before judgment obtained in a first action, was held to be a “subsequent” action within Married Women’s Property Act 1874 (c. 50), ss.2, 5 (*Fear v. Castle* 8 Q.B.D. 380).

(2) A “subsequent action for infringement” of a patent which will carry cost as between solicitor and client (Patents, Designs and Trade Marks Act 1883 (c. 57), s.31; see Patents Act 1949 (c. 87), s.64) means an action about the same patent commenced after one in which the court or judge has, under the section, certified the validity of the patent (*Automatic Weighing Machine Co. v. International Hygienic Society* 6 Pat. Ca. 475; *Saccharin Corporation v. Anglo-Continental Co.* [1900] W.N. 95).

See ACTION.

SUBSEQUENT ASSIGNMENT. “Subsequent” (Fine Arts Copyright Act 1862 (c. 68), s.4) meant subsequent to the first entry; therefore it was not necessary, under that section, to register the assignment of a copyright to the person who first made the entry of it (*Troitzsch v. Rees* 3 T.L.R. 773; see also *Ex p. Walker, Re Graves* L.R. 4 Q.B. 715).

See ASSIGNMENT.

SUBSEQUENT CONDITION. See CONDITION.

SUBSEQUENT OFFENCE. (1) By Summary Jurisdiction Act 1848 (c. 43), s.25, justices had power to impose a second sentence for a “subsequent offence”; it was

held that two charges could be heard consecutively at the same sittings and if the accused were found guilty of both, that he could be sentenced for the first, and that the second could be treated as the trial for a subsequent offence for which he might, at the same sittings, have a second sentence (*R. v. Cutbush* L.R. 2 Q.B. 379); but that case was doubted by *R. v. Martin*, *The Times*, May 18, 1911, and the court refused to extend its ruling to a third sentence.

(2) (Criminal Law Act 1827 (c. 28), s.10) meant subsequent conviction for offence (*R. v. Greenberg* [1943] K.B. 381).

(3) (Food and Drugs Act 1938 (c. 56), s.79). See *British Doughnut Co. v. Dale* [1944] K.B. 228; *Concentrated Foods v. Champ* [1944] K.B. 342 (meant an offence under the same section as was applicable to the previous offence).

SUBSIDENCE. (1) As to what is damage by subsidence, see *West Leigh Colliery Co. v. Tunnicliffe & Hampson Ltd.* [1908] A.C. 27, in which case the House of Lords reversed C.A. [1906] 2 Ch. 22, and restored judgment of Swinfen Eady J. [1905] 2 Ch. 390; *New Moss Colliery Co. v. Manchester* [1908] A.C. 117; *Lodge Holes Colliery Co. v. Wednesbury* [1907] 1 K.B. 78, cited STREET; see also SURFACE.

(2) Means sinking, that is to say movement in a vertical direction as opposed to "settlement," which means movement in a lateral direction (*Allen (David) & Sons Billposting v. Drysdale* [1939] 4 All E.R. 113.).

(3) "Subsidence damage." Stat. Def., Coal-Mining (Subsidence) Act 1950 (c. 23), s.17(1).

See CAUSE OF ACTION.

SUBSIDIARY. (1) "Subsidiary company" (Finance Act 1922 (c. 17), s.21; Finance Act 1927 (c. 10), s.31(3)); Income Tax Act 1952 (c. 10), s.256(1): see *Barrowford Holdings v. Inland Revenue Commissioners* [1940] 1 K.B. 81 (a company is not a "subsidiary company" merely because it is controlled by a foreign company). See also *I.R.C. v. Harton Coal Co.* [1960] Ch. 563; *C.H.W. (Huddersfield) v. I.R.C.* [1963] 1 W.L.R. 767.

(2) "The granting of perpetual annuities is not borrowing, and is not a purpose subsidiary to the general objects of a commercial or trading undertaking" (*per* Buckley J., *Re Southern Brazilian Rio Grande Railway* [1905] 2 Ch. 84). See ANCILLARY; BORROW.

"Subsidiary company." Stat. Def., Income and Corporation Taxes Act 1970 (c. 10), ss.532, 272.

SUBSIDY. (1) " 'Subsidy, *subsidium*,' signifies an ayd, tax, or tribute, granted by Parliament to the King, for the urgent occasions of the kingdom, to be levied of every subject according to the rate of his land or goods, after four shillings in the pound for land, and two shillings eight pence for goods" (Cowel; see hereon 2 Bl. Com. 307-316).

(2) Lands granted by the Crown under the Canadian Railway Land Subsidies Act 1890. were "to be granted as a subsidy—*i.e.* by way of bounty, and not by way of SALE"; therefore, the regulations on sales which authorised the reservation of mines and minerals were not applicable to these subsidy lands, except as to gold and silver (*Calgary, etc., Railway v. The King* [1904] A.C. 765).

SUBSIST. Limitations continue to "subsist," as regards exemption from estate duty under Finance Act 1894 (c. 30), s.5(3), so long as there is any estate created by the

settlement which has not come to an end (*per Williams J., A.-G. v. Wood* [1897] 2 Q.B. 102).

SUBSISTENCE. “During the subsistence of the marriage” (Matrimonial Proceedings (Magistrates Courts) Act 1960 (c. 48), s.1(1)) means while the marriage continues to exist. Cessation of cohabitation does not affect the “subsistence” of the marriage (*Waters v. Waters* [1968] P. 401).

SUBSISTING. (1) Trusts “subsisting and capable of taking effect”: see *Smyth-Pigott v. Smyth-Pigott* [1884] W.N. 149.

(2) Uses “capable of taking effect comprehend, no doubt, what are existing or remain possible in fact, but, on a literal and grammatical construction, extend also to what is allowable in law” (*per Kekewich J., Re Finch and Chew* [1903] 2 Ch. 486); therefore, if in executing a power, the appointer directs that the property shall go to the uses declared by a stated instrument “or such of them as are capable of taking effect,” and some of those uses are invalid, *e.g.* as creating a perpetuity, such void uses will be struck out and the appointment will be valid as regards the other uses (*ibid.*). Cp. *Wortham v. Mackinnon* 4 Sim. 495, cited EXISTING. See Law of Property Act 1925 (c. 20), ss.4, 39.

(3) Estates, etc., “subsisting or to arise,” under a settlement (Settled Land Act 1925 (c. 18), s.72(2)): see *Re Dickin & Kelsall* [1908] 1 Ch. 213, cited SUBJECT TO; *Re Davies & Kent* [1910] 2 Ch. 35, cited TRUSTEE.

Rights or interests “subsisting and valuable”: see RIGHTS.

Cp. EXISTING.

SUBSOIL. “‘Subsoil’ includes, *prima facie*, all that is below the actual surface down to the centre of the earth (see *Cox v. Glue* 5 C.B. 549). It is, therefore, a wider term than ‘mines’ or ‘quarries,’ or even than ‘minerals’ (see *Atkinson v. King* 2 L.R. Ir. 339). And an exception of ‘coals and coal mines’ will only comprise that portion of the subsoil which actually consists of mines of coal, and will not comprise any intervening or other strata (see *Ramsay v. Blair* 1 App. Ca. 704)”; MacS. (5th ed.) 24.

See LAND; MINE; SOIL; VEST; *Metropolitan Railway v. Fowler* [1893] A.C. 416, and *Farmer v. Waterloo & City Railway* [1895] 1 Ch. 627, cited APPROPRIATE.

SUBSTANCE. (1) “What is ‘substance’? It is every property a man has. So, in the Abduction Act 1558 (c. 8), for the punishment of such as shall take away maidens that be inheritors, the word ‘substance’ is made use of and means worldly wealth”; “‘substance’ includes everything that can be turned into money” (*per Mansfield C.J., Hogan v. Jackson* 1 Cowp. 307). See also *MacLagan’s Trustees v. Lord Advocate* 11 Sc. L.T. 227. See WORLDLY ESTATE; WORLDLY GOODS.

(2) A covenant to settle “fortune or substance,” embraces real estate (*Scully v. Scully* Sug. Prop. 104; see further FORTUNE). In *Maitland v. Adair* (3 Ves. 231, cited 2 Jarm. (8th ed.) 989), “my fortune” was, by a context, confined to personalty. See also as to “fortune,” *Bacon v. Cosby* 20 L.J. Ch. 213; “future fortune”: see FUTURE.

(3) “Substance recommended as a medicine” (Pharmacy and Medicines Act 1941 (c. 42), s.17(1)): see *Nairne v. Stephen Smith & Co. Ltd.* [1943] K.B. 17 (Hall’s Wine); *Potter & Clarke v. Pharmaceutical Society of Great Britain* [1947] Ch. 483.

(4) In a defence to a libel on a newspaper report of a trial, it is not a sufficient

justification to say that the report was "in substance" a true report and account of the trial (*Flint v. Pike* 4 B. & C. 473, which see for observations on that phrase).

(5) "Defect in substance" (Summary Jurisdiction Act 1848 (c. 43), s.1): see *Rodgers v. Richards* [1892] 1 Q.B. 555. See Magistrates' Courts Act 1952 (c. 55), s.100. Cp. VARIANCE.

(6) "Not of the substance demanded" (Food and Drugs Act 1938 (1 & 2 Geo. 6, c. 56), s.3(1)). "'Substance' would include matters where there had been adulteration of the article" (*per* Lord Goddard C.J., in *Bastin v. Davies* [1950] 2 K.B. 579).

(7) "Substance" (R.S.C., Ord. 38, r. 38). Where an order is made under r. 38 that the substance of expert evidence to be adduced be disclosed, the "substance" is not confined to factual descriptions but should include the expert's conclusions (*Ollett v. Bristol Aerojet (Note)* [1979] 1 W.L.R. 1197). See also POINT OF SUBSTANCE.

(8) "Substance likely to cause persons to slip" (Factories Act 1961 (c. 34), s.28(1)): the words "likely to cause persons to slip" qualify only the word "substance." They do not limit the amount of floor area which is to be kept free under the section. Short lengths of metal rods which had fallen from a workman's bench were held to be such a "substance" (*Hall v. Fairfield Shipbuilding and Engineering Co.* 1962 S.L.T. 206). "Substance" under this section includes water (*Taylor v. Gestetner* (1967) 2 K.I.R. 133).

"Nature, substance, or quality"; see NATURE.

"Substances": see MINE.

"Hard and incombustible substances": see WALL.

"Substance" contrasted with "MATTER": see DESTRUCTIVE.

Stat. Def., Food and Drugs Act 1955 (c. 16), s.135(1). Radioactive Substances Act 1960 (c. 34), s.19(1); Medicines Act 1968 (c. 67), s.132; Health and Safety at Work Act 1974 (c. 37), s.53; Development Land Tax Act 1976 (c. 24), Sched. 4, para. 9; Food Act 1984 (c. 30), s.132.

SUBSTANTIAL. (1) A word of no fixed meaning, it is an unsatisfactory medium for carrying the idea of some ascertainable proportion of the whole (*Terry's Motors Ltd. v. Rinder* [1948] S.A.S.R. 167).

(2) A house was described as "substantial and convenient," and having five bedrooms; held, not a misdescription, although the house was out of repair, and the walls in some places were only half-brick thick, and some of the bedrooms extremely small inner rooms, and without fireplace: "The description is of a 'substantial and convenient dwelling-house,' a description so relative in its terms as to afford abundant opportunity for a conflict of evidence as to matters which are rather matter of opinion than of fact" (*per* Stuart V.-C., *Johnson v. Smart* 2 L.T. 307).

(3) A covenant or agreement on the part of a grantee of land to erect "substantial stone or brick buildings for the purpose of an iron foundry" does not bind him to put up four walls of stone or brick exclusively; if the foundry is built of brick or stone, so far as is necessary and usual for that purpose, the obligation is performed (*Street v. Dobbie* 40 Sc. L.R. 701).

(4) In a lease under which the landlord is liable for "structural repairs of a substantial nature," the word "substantial" is equivalent to "considerable," and the liability should be measured more by reference to the antecedent disrepair than to the nature of the repair work (*Granada Theatres v. Freehold Investment (Leytonstone)* [1958] 1 W.L.R. 845).

(5) "Substantial repair": see REPAIR; GOOD REPAIR. See also *London v. South Western Railway* [1910] 2 Ch. 314.

(6) The Poor Relief Act 1601 (c. 2), s.1, required that persons appointed overseers should be "substantial householders." Where, however, a district contained only three houses, two of which were occupied by poor labourers, it was held that the appointment of all the three householders was good (*R. v. Stubbs* 2 T.R. 395). In delivering the judgment of the court in that case, Ashhurst J., said, "The word 'substantial' is a relative term. If there were a great many opulent farmers, there the appointment of a day-labourer might be improper; but here there were no other persons to serve. They are both householders with some land annexed to their houses, and one of them a proprietor. No better persons can be had than the place affords; and the want of them is no reason why the poor should not be provided for." But a servant occupying a tenement in part payment for his services is not such a householder (*R. v. Spurrell* L.R. 1 Q.B. 72) see also OCCUPIER.

(7) A "substantial inhabitant," liable to serve the office of rate collector under City of London Sewerage Act 1771 (c. 29), must have been a resident inhabitant (*Donne v. Martyr* 6 L.J.O.S.K.B. 246). See also RESIDE; INHABITANT.

(8) "Substantial amount" (Rent and Mortgage Interest (Restrictions) Act 1923 (c. 32), s.10). See *Maclay v. Dixon* 170 L.T. 49 (out of a rent of £80 p.a., £13 was attributable to the amount paid for furniture; held that this was a substantial amount); *Palser v. Grinling* [1948] A.C. 291 (one of the primary meanings of substantial is equivalent to considerable, solid, or big).

(9) "Substantial part of the . . . rent" (Rent Act 1968 (c. 23), s.2(3)). In calculating whether the use of furniture accounts for a substantial part of the rent it is the value of the furniture to the tenant, and not its cost to the landlord, which is relevant (*Goel v. Sagoo* [1970] 1 Q.B. 1). See this case and also *Thomas v. Pascall* [1969] 1 W.L.R. 1475 for discussions as to what percentage might be considered "substantial." In calculating whether the value to the tenant of the use of furniture accounts for a substantial part of the rent, the court should take into account changing economic conditions such as the shortage of housing and the availability of cheap furniture at secondhand shops (*Woodward v. Docherty* [1974] 1 W.L.R. 966). The value, to a tenant of a bachelor service apartment, of the work done by a housekeeper in cleaning the rooms daily and providing clean linen weekly, was held to have formed a "substantial part of the whole rent" within the meaning of this section (*Marchant v. Charters* [1977] 1 W.L.R. 1181). Rental value of furniture at an estimated 9 per cent. of the "whole rent" was considered not to be a "substantial part" (*Mann v. Cornella* (1980) 254 E.G. 403).

(10) "Substantial part" (Landlord and Tenant Act 1954 (c. 56), s.30(1)(f)). Where the landlord proposed to alter only the ground floor shop and to make no changes in the two upper storage storeys, it was held that the shop alone was not a "substantial part of those premises" within the meaning of this section (*Atkinson v. Bettison* [1955] 1 W.L.R. 1127). But the removal of a dividing wall between two shops, the reconstruction of an entirely new shop front and alterations to the lavatory accommodation were held to involve a "substantial part" of the premises within the meaning of this section (*Bewlay v. British Bata Shoe Co.* [1959] 1 W.L.R. 45).

(11) "Substantial work of reconstruction" (Landlord and Tenant Act 1954 (c. 56), s.30(1)(f)). The removal of ground floor partition walls and the installation of steel girders to support the upper floors was "substantial work of reconstruction" within this section (*Joel v. Swaddle* [1957] 1 W.L.R. 1094).

(12) "Substantial proportion" (Landlord & Tenant Act 1954 (c. 56), s.43(1)(d))

(ii). Transactions other than the sale of intoxicating liquor amounting to 17 or 18 per cent. of the business done by a public house were held not to amount to a "substantial proportion" of the whole (*Grant v. Gresham* [1979] E.G. 190).

(13) "Substantial number" in support of a development council (Industrial Organisation and Development Act 1947 (c. 40), s.1(4)). One thousand firms out of 6,000 and 150,000 employees out of 474,000 are not insubstantial numbers (*Thorneloe and Clarkson v. Board of Trade* [1950] 2 All E.R. 245).

(14) (a) "Substantial error or miscarriage of justice." As ground for new trial (R.S.C., Ord. 39, r. 6 now Ord. 59, r. 11(2)), see *Rowell v. Pratt* [1938] A.C. 101, at pp. 115–17. As ground for appeal to Judicial Committee in a criminal case: *Lawrence v. The King* [1933] A.C. 699; *Mahlikilili Dhalamini v. The King* [1942] A.C. 583. See also *Bray v. Ford* [1896] A.C. 44.

(b) "No substantial miscarriage of justice" within the meaning of Criminal Appeal Act 1907 (c. 23), s.4(1): see *R. v. Dyson* [1908] 2 K.B. 454; *R. v. Stoddart* 25 T.L.R. 612; *R. v. Mortimer* 80 L.J.K.B. 76; *R. v. Bates* [1911] 1 K.B. 964; *Stirland v. Director of Public Prosecutions* [1944] A.C. 315.

(c) "The test as to no substantial miscarriage of justice is whether the jury must inevitably have come to the conclusion they did apart from the evidence irregularly introduced" (*per* Lord Hewart C.J., in *R. v. Jones* 127 L.T. 16): see also *R. v. Pilley* 16 C.A.R. 138; *R. v. Redd* [1923] 1 K.B. 104.

(d) "Substantial wrong or miscarriage of justice" (Magisterial Causes Rules 1957 (No. 619), r. 73(1)). Prevention, by the justices, of a party from cross-examining a witness whose evidence might affect the result amounted to a "substantial wrong or miscarriage of justice" under this rule (*Blaise v. Blaise* [1969] P. 54).

(15) In deciding whether the reproduced part of copyright material is a "substantial" part of the whole it is the quality rather than the quantity of the part that should be considered (*Ladbroke (Football) v. William Hill (Football)* [1964] 1 W.L.R. 273).

(16) "Substantial" (Restrictive Trade Practices Act 1956 (c. 68), s.21(1)(b)) is not a term that demands a strictly quantitative or proportional assessment (*In re Net Books Agreement* 1957 [1962] 1 W.L.R. 1347; *Re Finance Houses Association's Agreement* [1965] 1 W.L.R. 1419).

(17) "Substantial value or advantage" (Law of Property Act 1925 (c. 20), s.84(1A)). The true measure of substantiality lies in the degree of depreciation in the value of the enjoyment of the property of the objector which would result from the modification of a restrictive covenant (*Re Gaffney's Application* [1974] 35 P. & C.R. 440). A "resplendent" view over the surrounding landscape could be a "practical benefit of substantial value or advantage" within the meaning of this section (*Gilbert v. Spoor* [1982] 3 W.L.R. 183).

(18) "Substantial rebuilding or reconstruction" (Leasehold Reform Act 1967 (c. 88), s.4(1)(d)). The addition of bathrooms, lavatories and wash basins was an improvement and not a "substantial rebuilding or reconstruction" within the meaning of this section (*Gidlow-Jackson v. Middlegate Properties* [1974] Q.B. 361).

(19) "Substantial contribution" (Inheritance (Provision for Family and Dependents) Act 1975 (c. 63), s.1(3)). In calculating whether the deceased had been making "a substantial contribution" towards the needs of an applicant under this Act, contributions made for full consideration, whether by agreement or otherwise, are to be disregarded (*Re Beaumont (Decd.)*; *Martin v. Midland Bank Trust Co.* [1979] 3 W.L.R. 818). The court must consider whether on balance the contributions made by the deceased were substantially greater than those made by the applicant (*Jelley v. Iliffe* [1981] 2 W.L.R. 801).

(20) "Substantial reason of a kind such as to justify the dismissal of an employee" (Industrial Relations Act 1971 (c. 72), s.24(1)(b); now Employment Protection (Consolidation) Act 1978 (c. 44), s.57(1)(b). In deciding whether an employee has been dismissed for a "substantial reason" a court or tribunal should not construe that phrase as being ejusdem generis with the reasons for dismissal listed in the 1971 Act, s.24(2) (now s.57(2) of the 1978 Act). This list should not be considered exhaustive (*R.S. Components v. Irwin* [1973] I.C.R. 535; *Priddle v. Dibble* [1978] 1 W.L.R. 895). Failure to pass an aptitude test could well be a "substantial reason" for dismissal (*Blackburn v. Post Office* [1974] I.C.R. 151). See also SUCH. The non-renewal on expiry of a fixed-term contract to do a temporary job was "some other substantial reason" such as to justify dismissal (*Terry v. East Sussex County Council* [1976] I.C.R. 536). The refusal of an employee to co-operate with his employers in the reorganisation of the business was considered a "reason" "substantial" enough "to justify" his "dismissal" (*Hollister v. National Farmers' Union* [1979] I.C.R. 542). The non-acceptance of the employee by the company's insurers for the purpose of fidelity guarantee insurance (where it was a condition of employment that he should be accepted) was held to be a "substantial reason" for dismissal (*Moody v. Telefusion* (1978) 13 I.T.R. 425). A sentence of imprisonment is capable of being a "substantial reason" for the purposes of s.57 (*Kingston v. British Railways Board* [1984] I.C.R. 781). The installation of a modern heating system requiring the services of a heating technician was a "substantial reason" for dismissing the plumber who had serviced the old equipment but was unqualified to service the new (*Murphy v. Epsom College* [1984] I.C.R. 80).

(21) Where an agreement for the sale of gas provided for a price review if either party suffered "substantial economic hardship" it was held that "substantial" meant something more than ordinary every day variations and difficulties arising in economic circumstances; it meant something weighty or serious (*Superior Overseas Development Corp. and Phillips Petroleum (U.K.) Co. v. British Gas Corp.* [1982] 1 Lloyd's Rep. 262).

See CAUSE.

SUBSTANTIALLY. (1) WORKS "substantially commenced": see *A.-G. v. Bournemouth* [1902] 2 Ch. 714, in which case also *Re Dudley Trams Co.* 63 L.J. Ch. 108, cited CONCLUSIVE EVIDENCE, was disapproved.

(2) Substantially infringe a patent: see *per* Grove J., *Young v. Rosenthal* 1 Pat. Ca. 33, 41.

(3) The words " 'substantially as described' (in a patent claim) are treated sometimes as lessening, sometimes as increasing the width of the claim. In the U.S.A. the words are not allowed. They ought to be treated as meaning that the invention does the thing described substantially as described" (*per* Fletcher Moulton L.J., in *Bernard v. L.G.O.C.* 38 R.P.C. 1).

(4) "Substantially the same" (R.S.C., Ord. 16A, r. 12(1)(b)(c), now Ord. 16, r. 1(1)(b)). The words relate to facts which have to be examined for the purpose of ascertaining what is the relief or remedy to which the parties are entitled. "Substantially" must have been put in in order to embrace within the rule something which was not exactly a repetition of the relief or remedy asked for (*Re Burford* [1932] 2 Ch. 122, 138). For further discussions as to what is or is not "substantially the same" within the meaning of this rule, see *Standard Securities Ltd. v. Hubbard (Telesurance Ltd. Third Party)* [1967] Ch. 1056, and *Chatsworth Investments Ltd. v. Amoco (U.K.) Ltd.* [1968] Ch. 665).

(5) "Substantially impaired" (Homicide Act 1957 (c. 11), s.2(1)). Substantial

does not mean trivial or minimal, neither does it mean total. It is for the jury to decide whether the impairment is substantial (*R. v. Lloyd* [1967] 1 Q.B. 175). See also *R. v. Biess* [1967] Qd. R. 470.

(6) An owner who is directed by an improvement notice to do work to a dwelling which he cannot lawfully be directed to do is “substantially prejudiced” within the meaning of s.27(3) of the Housing Act 1964 (c. 56) (*De Rothschild v. Wing R.D.C.* [1967] 1 W.L.R. 470; *Harrington v. Croydon Corporation* [1968] 1 Q.B. 856).

(7) “Substantially prejudiced” (Acquisition of Land (Authorised Procedure) Act 1946 (c. 49), Sched. 1, para. 15(1)(b)). In a case where, after requests for information as to ownership had revealed no other interest, a compulsory purchase order was served on the husband only, it was held that the wife, who had a joint interest with her husband but had not attended the inquiry, had not been “substantially prejudiced” (*George v. Secretary of State for the Environment* (1979) 38 P. & C.R. 609).

(8) “Substantially different from . . . ordinary dwelling-houses” (Housing Act 1980 (c. 51), Sched. 1, Part 1, para. 3). The addition of a downstairs lavatory, installed for the benefit of a child who had difficulty climbing stairs, did not make a house “substantially different” within the meaning of this paragraph (*Freeman v. Wanstead District Council* [1984] 2 All E.R. 746).

(9) “Substantially to the like effect” (Landlord and Tenant (Notices) Regulations 1954 (No. 1107), reg. 4). The form of notice to quit prescribed by the 1954 Regulations, although replaced by one prescribed by the 1969 Regulations (No. 1771), was held to be “substantially to the like effect” as the later form and therefore valid (*Sun Alliance and London Assurance Co. v. Hayman* [1975] 1 W.L.R. 177; *Snook v. Schofield* (1975) 234 E.G. 197). Where a notice to quit was issued in the form prescribed by these Regulations but omitting certain notes which were irrelevant in the circumstances of this case, it was held that the form used was “substantially to the like effect” as the one prescribed (*Tegerdine v. Brooks* (1978) 36 P. & C.R. 261).

SUBSTITUTE. (1) “ ‘Substitute, *substitutus*,’ one placed under another to transact or do some business” (Cowel).

(2) Where a contract specified shipment by a specific ship “or substitute” this option was exercisable by the shipper as well as the ship owner, and thus bound him to send the goods within a reasonable time (*Borthwick (Thomas) v. Bunge & Co.* [1969] 1 Lloyd’s Rep. 17).

“Substitute for beer”: see BEER.

See SHERIFF.

SUBSTITUTED. “Collateral, or auxiliary, or additional, or substituted, security” (Stamp Act 1891 (c. 39), Sched. 1, cl. 2, mortgage): where a trust deed of a company is to secure debentures or debenture stock with power to surrender or withdraw part of the property therein comprised, and only a small part of such property is surrendered or withdrawn and in lieu thereof another small property is conveyed to the trustees but without any covenant for payment of the debentures or debenture stock or any declaration of trust of the newly assured property, such latter conveyance is a “substituted security” for the whole amount of the debentures or debenture stock, and the *ad valorem* duty of 6d. *per* £100 has to be paid thereon (*Gartsides Co. v. Inland Revenue Commissioners* 82 L.T. 686). See also *City of London Brewery v. Inland Revenue Commissioners* [1899] 1 Q.B. 121, on which see *Mount Lyell Co. v. Inland Revenue Commissioners* [1904] 1 K.B. 757, cited SUBSTI-

TUTION; *British Oil Mills Co. v. Inland Revenue Commissioners* [1903] 3 K.B. 689; *Suffield v. Inland Revenue Commissioners* [1908] 1 K.B. 865.)

SUBSTITUTION. (1) Fixtures, plant, etc., “in substitution” of others (Bills of Sale Act 1882) (c. 43), s.6(2)): see *London & Eastern Counties Loan Co. v. Creasy* [1897] 1 Q.B. 768, cited PLANT.

(2) Marketable security “given in substitution for a like security” (Stamp Act 1891 (c. 39), Sched. 1, Marketable Security (4)) means a marketable security “which is like the original security” as regards duty; therefore, marketable securities given by a colonial company on the surrender of similar ones by an English company are not within the phrase, because they become liable to stamp duty under different considerations and circumstances (*Mount Lyell Co. v. Inland Revenue Commissioners* [1904] 1 K.B. 757; affirmed [1905] 1 K.B. 161). See SECURITY; Finance Act 1910 (c. 8), s.76.

(3) A gift “by substitution” in a will: see *Re Lord’s Settlement* [1948] L.J.R. 207. See ADDITION; LIEU; NOVATION; SUBROGATION.

SUBSTITUTIONAL. As to construction of substitutional gifts: see 2 Jarm. (8th ed.) ch. 37; SHARE, and especially *Christopherson v. Naylor* 1 Mer. 320, there cited. See also *Re Joseph* [1908] 2 Ch. 507.

Substitutional legacy: see CUMULATIVE.

SUBSTITUTIVE. “Substitutive limitation” (Succession Duty Act 1853 (s.2): see *A.-G. v. Eyres* [1909] 1 K.B. 723.

SUBTERRANEAN WATER. See hereon *Grand Junction Canal Co. v. Shugar* 6 Ch. 483; *Popplewell v. Hodkinson* L.R. 4 Ex. 248; *Ballard v. Tomlinson* 29 Ch. D. 115. See also *Bradford v. Ferrand* [1902] 2 Ch. 655, cited DEFINED CHANNEL; *Salt Union v. Brunner* [1906] 2 K.B. 822.

See DEFINED CHANNEL; WATERS.

SUBURB. (1) “As the heavens are the habitation of Almighty God, so the earth hath he appointed as the suburbs of heaven to be the habitation of man” (Co. Litt. 4a).

(2) Croydon might perhaps be held to be a “suburb” of London, but it is not “one of the western suburbs of London or in the adjacent county,” within a clause for the purchase of land for a home: see *Re Whiteley* 55 S.J. 291, where Eve J., said he did not treat the word “adjacent” as meaning “adjoining.”

SUCCEED. (1) On the construction of a will, see *Bagot v. Legge* 34 L.J. Ch. 156.

(2) “If any person shall have succeeded to any trade,” etc., (Income Tax Act 1842 (c. 35), s.100, Sched. D, 3rd set of rules, No. 4—see *Ryhope Co. v. Foyer* 7 Q.B.D. 485. See also *Bell v. National Provincial Bank* [1904] 1 K.B. 149, explaining *Ferguson v. Aikin* 4 Tax Cases 36; *Watson v. Inland Revenue Commissioners* 39 Sc. L.R. 604; TRADE; *Kirk & Randall Ltd. v. Dun* 8 Tax Cas. 663.

(3) “Succeeded” (Income Tax Act 1918 (c. 40), Sched. D, Cases I and II, r. 9). Where there was a change in a partnership, the new partnership was taken to have succeeded to the old partnership (*Income Tax Commissioners v. Gibbs* [1942] A.C. 402).

(4) “Succeed to a business” (Finance Act 1926 (c. 22), s.32; Income Tax Act 1945 (c. 32), s.17; see now Income and Corporation Taxes Act 1970 (c. 10), s.154).

A manufacturing subsidiary company which sold all its products to its parent company who retailed them, was wound up and the parent company continued itself to manufacture the goods at the same factory and sell them as before. Held, that the parent company did not “succeed” to the business of the subsidiary. That business had entirely ceased. Selling wholesale is one business and selling retail is another (*Laycock v. Freeman, Hardy & Willis Ltd.* [1939] 2 K.B. 1). Cf. *Briton Ferry Steel Co. v. Barry* [1940] 1 K.B. 463. But the fact that a company had gone out of business (as when a road haulage company had been nationalised) did not of itself mean that there had not been a succession (*Bramford's Road Transport v. Evans* [1953] 1 W.L.R. 1385). See also *I.R.C. v. Barr* [1954] 1 W.L.R. 792.

See SUCCESSORS IN BUSINESS.

SUCCEEDING. The phrase “succeeding overseers” (Poor Relief Act 1743 (c. 38), s.11) was not confined to overseers who immediately succeeded those who made the rate; “succeeding,” there, *semble*, meant “subsequent” (*East Dean v. Everett* 30 L.J.M.C. 117). Cp. SUCCESSIVE.

SUCCESSFUL. A plaintiff who recovers nominal damages is not necessarily a “successful” one (*Anglo-Cyprian Trade Agencies v. Paphos Wine Industries* [1951] 1 All E.R. 873).

SUCCESSION. (1) A devise to A “and his children in succession,” gives A an estate tail (*Tyrone v. Waterford* 29 L.J. Ch. 486).

(2) As regards succession duty, “every past or future disposition of property, by reason whereof any person has or shall become beneficially entitled to any property, or the income thereof, upon the death of any person dying after the time appointed for the commencement of this Act (May 19, 1853), either immediately or after any interval, either certainly or contingently, and either originally or by way of substitutive limitation, and every devolution by law of any beneficial interest in property, or the income thereof, upon the death of any person dying after the time appointed for the commencement of this Act, to any other person in possession or expectancy, shall be deemed to have conferred or to confer on the person entitled by reason of any such disposition or devolution a ‘succession’; and the term ‘successor’ shall denote the person so entitled; and the term ‘predecessor’ shall denote the settlor, disponent, testator, obligor, ancestor, or other person, from whom the interest of the successor is or shall be derived” (Succession Duty Act 1853 (c. 51), s.2). “In framing that Act the word ‘succession’ was adopted for the purpose of denoting any property passing upon death from one person to another by virtue of any gift or descent, or of any contract, not being a bona fide contract of purchase or loan” (*per Westbury C., Floyer v. Bankes* 33 L.J. Ch. 3); and it did not include a conveyance or assignment by way of bona fide sale (*Fryer v. Morland* 3 Ch. D. 675; *A.-G. v. Brown* 41 S.J. 454; but see *De Rechberg v. Beeton* 38 Ch. D. 193). See also *A.-G. v. Littledale* L.R. 5 H.L. 290; *A.-G. v. Middleton* 27 L.J. Ex. 229; *A.-G. v. Sibthorp* 28 L.J. Ex. 9; *A.-G. v. Braybrooke* 9 H.L. Ca. 150; 31 L.J. Ex. 177; *Solicitor-General v. Law Reversionary Society* L.R. 8 Ex. 233; *A.-G. v. Mander* 65 L.J.Q.B. 246; *A.-G. v. Wolverton* [1897] 1 Q.B. 231; nom. *Wolverton v. A.-G.* [1898] A.C. 535; *Northumberland v. A.-G.* [1905] A.C. 406, cited ALIENATION; *A.-G. v. Chambers* [1921] 1 K.B. 173; *Lord Advocate v. McAlister* (1924) A.C. 586.

(3) “Succession,” as above defined, included “an increase of benefit in property” (*per Lindley L.J., A.-G. v. Robertson* [1893] 1 Q.B. 293), e.g. as held in that case, where income was to wife for life, remainder to husband for life, and in default of

issue, to wife absolutely—there, the increased benefit taken by the wife on surviving her husband (there being no issue) was a “succession.” Cp. *A.-G. v. Selborne* [1902] 1 K.B. 388, cited EXTINCTION.

(4) For clause in a settlement exonerating a jointress from herself paying succession duty, see *Floyer v. Banks* sup. As to what words will exonerate a beneficiary from succession duty, see CLEAR; DEDUCTION.

(5) “Succession” (Customs and Inland Revenue Act 1889 (c. 7), s.6): see *A.-G. v. Aberdare* [1892] 2 Q.B. 584. See also WHOLLY.

(6) “By way of succession.” The provision in Settled Land Act 1882 (c. 38), s.2(1) (see Settled Land Act 1925 (c. 18), s.1), that an instrument limiting or declaring trusts “for any persons by way of succession” is a settlement, is adopted from Settled Estates Act 1877 (c. 18), s.2, which adopted it from Settled Estates Act 1856 (c. 120), s.1: see hereon *Re Birtle* 32 L.J. Ch. 439; *Re Bardin* 28 L.J. Ch. 840; *Re Goodwin* 3 Giff. 620; *Re Horn* 29 L.T. 830; *Collett v. Collett* L.R. 2 Eq. 203; *Re Laing* L.R. 1 Eq. 416; *Re Shephard* L.R. 8 Eq. 571; *Carlyon v. Truscott* L.R. 20 Eq. 348; *Re Morgan* L.R. 9 Eq. 588; *Beioley v. Carter* 4 Ch. 230; *Re Morgan* 49 L.J. Ch. 577. Cp. INTEREST IN SUCCESSION.

(7) Succession to a trade, business, profession, etc., for purposes of income tax: see SUCCEED; *Fulwood, etc., Co. v. Inland Revenue Commissioners* 9 Tax Cas. 101.

(8) “Succession,” in Finance Act 1910 (c. 35), s.58(4), was used with the meaning given to the word in the Succession Duty Act 1853 (c. 51), *i.e.* a succession in respect of which duty was chargeable. “First succession” in the same Act meant the first dutiable succession: see *Lord Advocate v. Hamilton* [1920] A.C. 50. See also SUCCESSION DUTY.

See PREDECESSOR; DERIVE; DISPOSITION; INHERIT; LEGACY DUTY; UNDER; SUCCESSOR; INTESATE.

SUCCESSION DUTY. See SUCCESSION.

SUCCESSIVE. (1) A “successive occupier” for purposes of the parliamentary franchise, was one who occupied premises, in the same borough, or division of a county, “in immediate succession” (Representation of the People Acts 1832 (c. 45), s.28, and 1867 (c. 102), s.26); but such premises might be partly by virtue of service and partly under ordinary tenancies, or wholly by or under either mode of occupation (*Torish v. Clark* 18 L.R. Ir. 285, followed in *Nicholson v. Yeoman* 24 Q.B.D. 145). The successive occupation of lodgings had to be in “the same house” (Parliamentary and Municipal Registration Act 1878 (41 & 42 Vict., c. 26), s.6). See also “nature of qualification,” under NATURE. Cp. SUCCEEDING.

(2) A “successive owner,” liable to an improvement rate, included a mortgagee in possession (*Blackburn v. Micklethwait* 54 L.T. 539).

(3) “Successive limitations”: see *Re Conyngham* [1921] 1 Ch. 491; *Re Brooke* [1923] W.N. 148.

SUCCESSIVELY. (1) “In many cases devises to several persons successively have been contended to be void on account of the uncertainty respecting the order in which the objects are to take. Where the devise is to several specified individuals in succession, the obvious rule is, to hold them to be entitled in the order in which their names occur. If it be to a class of persons (constituted such in virtue of birth), as to children, sons, or brothers, then priority according to seniority of age may be presumed to be intended. And the circumstance of a condition being imposed on

the devisees has been held not to vary the order in which they are successively entitled" (1 Jarm. (8th ed.) 497, and cases there cited).

(2) A devise "to the first son of T. severally and successively in tail male" must be read, "to the first, and every other, son," as otherwise "severally and successively" would be without meaning (*Parker v. Tootal* 11 H.L. Ca. 143; see thereon 1 Jarm. (8th ed.) 597, 2 *ibid.* 632).

(3) Custom of a manor on grant for lives "successively": see *Doe d. Nepean v. Goddard* 1 B. & C. 522.

SUCCESSOR; SUCCESSORS. (1) A successor is "he that followeth or cometh in another's place" (Jacob).

(2) (a) A devise to A "and his successors," even prior to the Wills Act 1837 (c. 26) passed the fee simple (*Webb v. Herring* 1 Rolle, 399, pl. 25; *A.-G. v. Gilbert* 10 Bea. 517); so, a bequest of personalty to an earl, "and to his successors, *and to be enjoyed with and go with the title,*" is an absolute gift notwithstanding the words italicised (*Re Johnston, Cockerell v. Essex* 26 Ch. D. 538).

(b) But a grant "to any natural person, to have and to hold to him and his successors—by this he hath only an estate for his life" (Touch. 106; see also Co. Litt. 8 b).

(c) "Heirs and successors"; where residue was left to "my brothers E. and W. and my sister S. or their heirs and successors" the words "heirs and successors" was not such a reference to the Statutes of Distribution as would oust the general rule that the members of a class took as joint tenants (*Re Kilvert, Midland Bank Executor and Trustee Co. v. Kilvert* [1957] Ch. 388).

(3) In a conveyance of a fee simple to a corporation the apt words of limitation are "and their successors"; and in the case of a corporation sole, "without these words, successors, there passeth no inheritance" (Co. Litt. 8 b; see thereon *ibid.* 94 b; see also FEE SIMPLE).

(4) (a) A devise to a minister of religion "and his successors," e.g. "to T.W., Minister of the Roman Catholic Chapel at Kendal, and to his successors for ever," is a devise for the benefit of the office held, not of the person named, and was void under the Statute of Mortmain (*Thornber v. Wilson* 24 L.J. Ch. 667).

(b) So, a devise to any person either as, or known to the testator, as a holder of an office in a society, "or his successors," is for the benefit of the office held; for the primary meaning of "successors" is persons in succession, and the only succession to which the testator could refer is the succession to the office (*per* Farwell J., *Re Delany* [1902] 2 Ch. 642 following *Thornber v. Wilson* *sup.*, and citing *Smart v. Prujean* 6 Ves. 567; cp. *Doe d. Phillips v. Aldridge* 4 T.R. 264, and *Donnellan v. O'Neill* Ir. R. 5 Eq. 532, cited OFFICE; RELIGIOUS). See hereon *Re Lalor* 71 L.J.P.D. & A. 17.

(c) So, land awarded under an Enclosure Act to A. as "vicar, and his successors," goes to him only in corporate capacity, "successors" being only a word limiting the fee simple and not having the effect of making the land "settled" (*Ex p. Castle Bytham* [1895] 1 Ch. 348).

(5) The "successors" of a pawnbroker licensed in 1872 (Pawnbrokers Act 1872 (c. 93), s.39) were those only who succeeded a pawn shop that he carried on, and their privilege under the section was confined to such a shop; they could not open a new shop without taking out a certificate (*R. v. Inland Revenue Commissioners* [1907] 1 K.B. 108).

(6) Obligation in a feu contract binding "our successors": see *Weir v. Trinity Land Co.* 6 Sc. L.T. 344.

(7) "His assigns or successors": see *Hinkins v. Alder* 50 S.J. 258, cited ASSIGNS.

(8) "Successor in title." Where a purchaser covenants to do nothing which the vendor or his successors in title consider injurious to the adjoining land, it seems that "successors in title" means successors in title otherwise than by sale (*Zetland (Marquis) v. Driver* [1939] Ch. 1). A trustee in bankruptcy was a "successor in title" to a tenant and was bound by a covenant binding the tenant (*Re Wright, ex p. Landau v. The Trustee* [1949] Ch. 729). See Law of Property Act 1925 (c. 20), ss.78, 79.

Stat. Def., Trade Union and Labour Relations Act 1974 (c. 52), s.30; Housing Act 1980 (c. 51), s.31, Limitation Act 1980 (c. 58), s.31.

"Successors in office": see Settled Land Act 1925 (c. 18), s.33.

"Successor company." Stat. Def., Income and Corporation Taxes Act 1970 (c. 10), s.252.

SUCCESSORS IN BUSINESS. (1) Neither partner of a dissolved firm is the "successor" in business of such firm, when each partner goes his own way and carries on business for himself (*Eaton v. Western* 9 Q.B.D. 636).

(2) "Successors in business, in a lessee's covenant to purchase goods of his lessor: see *Birmingham v. Jameson* 67 L.J. Ch. 403, *Manchester Brewery Co. v. Coombs* [1901] 2 Ch. 608, and *John v. Holmes* [1900] 1 Ch. 188, cited SPIRITUOUS LIQUOR.

See SUCCEED.

SUCH. (1) "Such," like "said," generally refers to its last antecedent (see hereon *per Halsbury C., Ex p. Barnes* [1896] A.C. 150). See also *Duffield v. M'Naster* [1906] 1 Ir. R. 350, 358.

(2) "Such," in testamentary gifts of a substitutional character: see *West v. Orr* 8 Ch. D. 60; *Heasman v. Pearce* 7 Ch. 285; *Miller v Chapman* 24 L.J. Ch. 409; 2 Jarm. (8th ed.) 1317, n.

(3) As to the omission of "such," see *Evans v. Evans* [1904] P. 378.

(4) "Such as shall survive," in a devise to a class, construed as the others or other of them (*Re Tharp* 33 L.J. Ch. 59). See SURVIVOR.

(5) "Such as to justify" (Industrial Relations Act 1971 (c. 72), s.24(1)(b)) was held to mean "can" justify rather than "does" justify (*Mercia Rubber Mouldings v. Lingwood* [1974] I.C.R. 256).

(6) Power to appoint to "such" of a class, "authorises exclusion, unless a contrary intention appear" (Farwell (3rd ed.), 415, cited by Jessel M.R., *Re Veale* 4 Ch. D. 64). Cp. ALL AND EVERY; AMONG.

(7) "Such bankrupt" (Bankruptcy Act 1842 (c. 122), s.23): see *Norton v. Walker* 3 Ex. 480.

(8) "Such bill" (Solicitors Act 1843 (c. 73), s.38 referred back to the bill to be delivered under s.37, and meant a bill as between solicitor and client (*Re Cowdell* 52 L.J. Ch. 246; following *Re Grundy* 17 Ch. D. 108).

"Such consent not to be withheld unreasonably": see UNREASONABLY.

(9) "Such costs as were necessary or proper for the attainment of justice" (R.S.C.) Ord. 68, r. 28). The fees of a witness which included expenditure that could have been claimed as damages, but had not been, could be claimed instead as costs under this rule (*Manakee v. Brattle* [1970] 1 W.L.R. 1607).

(10) "Such deed" (Bankruptcy Act 1861-(c. 134), s.198): see *Ames v. Colnaghi* L.R. 3 C.P. 359.

(11) "Such issue": see *Re Hutchinson* 55 L.J. Ch. 574, and whether prospective or retrospective, see 2 Jarm. (8th ed.) 696; *Strutt v. Braithwaite* 21 L.J. Ch. 609;

Hope v. Potter 3 K. & J. 206; *Harley v. Mitford* 21 Bea. 280. "IN DEFAULT of such issue": see 3 Jarm. (8th ed.) 1843 *et seq.*; *Re Lowman* [1895] 2 Ch. 348.

(12) "Such" (Lands Clauses Consolidation Act 1845 (c. 18), s.9), in the phrase "compensation to be paid for any permanent damage or injury to any such lands," was to be rejected as insensible (*Stone v. Yeovil* 45 L.J.C.P. 657).

(13) "Such lands" (Lands Clauses Consolidation Act 1845, s.94) applied to all intersected lands, whether in a town or not (*Eastern Counties Railway v. Marriage* 31 L.J. Ex. 73; 9 H.L. Ca. 32).

(14) "Such liquor to bona fide travellers," or to lodgers (Licensing Act 1874 (37 & 38 Vict., c. 49), s.10) meant liquor to be consumed on the premises by the person supplied (*Mountifield v. Ward* [1897] 1 Q.B. 326).

(15) "Such list" (Municipal Corporations Act 1835 (c. 76), ss.15 and 48) "does not necessarily mean a correct and perfect list, but a list of such a kind and description as the Act requires" (*per* Patteson J., *King v. Burrell* 12 A. & E. 468). For a similar interpretation of "such," but in another context, see *per* Wightman J., *R. v. Randall* 4 E. & B. 569.

(16) "Such member of the tenant's family" (Increase of Rent and Mortgage Interest (Restrictions) Act 1920 (c. 17), s.12(1)(g) meant one member, and only one member could obtain a successor's statutory tenancy under this section (*Dealex Properties v. Brooks* [1966] 1 Q.B. 542).

(17) "Such mines" (Railway Clauses Consolidation Act 1845 (8 & 9 Vict., c. 20), s.80)): see *Midland Railway v. Miles* 30 Ch. D. 634; see also s.78, 1845 Act; *Joicey & Co. v. North Eastern Railway* [1906] 1 K.B. 195; reversed in House of Lords, *nom. Eden v. North Eastern Railway* [1907] A.C. 400.

(18) "Such order" (Judgments Act 1838 (c. 110), s.15) meant a charging order *nisi*; therefore, when the order had been made absolute it could not be rescinded under that section (*Jeffryes v. Reynolds* 52 L.J.Q.B. 55; *Drew v. Lewis* [1891] 1 Q.B. 450).

(19) "Such other funds, charities and institutions as my executors in their absolute discretion shall think fit": *Re Clarke* 92 L.J. Ch. 629.

(20) "Such other order as to the court shall seem meet," in the prayer of a petition for winding-up a company under supervision, enables the court (petitioner being willing) to make a compulsory order (*Re Electric & Magnetic Co.* 50 L.J. Ch. 491).

(21) "Such other parties" (Supreme Court Costs Rules 1959 (No. 1947), r. 8). In the context the phrase meant parties other than the solicitor's own client (*D. v. D.* [1963] 1 W.L.R. 194, D.C.).

(22) A gift of "such parts" of testator's property as the legatee may desire, enables the legatee to take the whole; and if the gift embraces only a class of testator's property, then the whole of such class may be appropriated by the legatee (*Arthur v. Mackinnon* 11 Ch. D. 385). See APPROPRIATE; PART; WHAT IS LEFT.

(23) Power to let "such parts" of testator's property "as have been usually granted or demised": see *Doe d. Bligh v. Colman* 1 Bing. 28; see also ANY.

"Such prosecution": see PROSECUTION.

(24) "Such general or quarter sessions" (Vagrancy Act 1824 (c. 83), s.14) referred to the kind of court, and not the individuals constituting a particular sessions (*R. v. Warwickshire* 4 L.J.M.C. 62).

(25) "Such a sum in every year as after deducting income tax for the time being payable in respect thereof will leave a clear sum of £2,000": for the construction of such a bequest see *Re Bates* [1925] 1 Ch. 157.

(26) "Such trusts as are hereinafter declared": see *Hindle v. Taylor* 5 D.G.M. & G. 592; see also *HEREIN*.

"Such and the like trusts": see *LIKE*.

(27) "Such warrant of attorney" (Warrants of Attorney Act 1822 (c. 39), s.4) referred only to the warrants of attorney mentioned in the preceding sections (*Morris v. Mellin* 6 B. & C. 446).

SUDDEN. (1) A strike did not, of itself, create a "sudden and urgent necessity" within s.54, Poor Law Amendment Act 1834 (c. 76), (*A.-G. v. Merthyr Tydfil* [1900] 1 Ch. 516).

(2) "Sudden changes of direction, height, width and gradient." These words in 34(1)(a) of the Mines and Quarries Act 1954 (c. 70) are concerned with the design of the road itself, and not with the equipment in the road, such as a conveyor belt which by projecting across a road reduced its effective height (*Lister v. National Coal Board* [1970] 1 Q.B. 228).

See *GRAVE*.

SUE. (1) "To sue," e.g. by a guardian for an infant, is "sufficiently significant of a defendant; for 'to sue' is nothing more than 'to take care of, or take upon one, the defence or tuition of the cause for the infant, or on his behalf.' And these words 'to sue' may be applied indifferently either to the demandant or plaintiff, or to the tenant or defendant, for the suit of one party or of the other must be followed. And the words 'to sue' not only signify 'to prosecute,' but also 'to defend,' or to do something which the law requires for the better prosecution or defence of the cause" (*Hesketh v. Lee* 2 Saund. 95). Cp. *DEFEND*.

(2) "'To sue,' generally speaking, means to bring action" (*per* Bayley J., *Guthrie v. Fisk* 3 B. & C. 183); accordingly it was there held that a power to a company "to sue" in the name of their officer, does not enable that officer to be a good petitioning creditor in bankruptcy on behalf of the company—a rule that was followed in *Re Nance* [1893] 1 Q.B. 590. See *SUIT*.

Not to sue for future conjugal offence: see *COMMENCED*.

(3) "Sue forth": see *Re Rowe* 4 Dea. 68, cited *ISSUE OF ORDERS*.

(4) "Sue for, recover and receive": see *Re Dowson and Jenkins* [1904] 2 Ch. 219.

(5) "In consideration of you undertaking not to sue . . . my broker . . . I guarantee the payment of the sum, or such part as shall not have been repaid to you within six months": this was a guarantee in consideration of a forbearance from suing the broker for six months (*Board v. Hoey* 65 T.L.R. 43).

(6) A tortfeasor will be liable to make contribution to another tortfeasor under s.6(1) (c) of the Law Reform (Married Women and Tortfeasors) Act 1935 (c. 30), if he "is, or would if sued have been, liable in respect of the same damage." "Sued" here means sued to judgment so that contribution cannot be obtained from a public authority against whom an action had not been begun within the proper time limit (*Wimpey (George) & Co. v. B.O.A.C.* [1955] A.C. 169; *Hart v. Hall & Pickles*; *Reyner (G.) & Co. (Third Party)* [1969] 1 Q.B. 405).

(7) "Sued jointly" (R.S.C., Ord. 22 r. 3(4)) only applies where there is one cause of action but several defendants; and not where separate causes of action exist (*Townsend v. Stone Toms and Partners* [1981] 1 W.L.R. 1153).

SUE AND LABOUR. (1) As to construction of the "sue and labour" clause in a marine insurance, see *Uzielli v. Boston Insurance* 15 Q.B.D. 11; *Lysaght v. Coleman* [1895] 1 Q.B. 49; *The Pomeranian* [1895] P. 349; Arn. (13th ed.) ss.22,

864–874. See also *Cunard S.S. Co. v. Marten* [1902] 2 K.B. 624; affirmed [1903] 2 K.B. 511; *Western Assurance v. Poole* [1903] 1 K.B. 376; *Crouan v. Stanier* [1904] 1 K.B. 87; Marine Insurance Act 1906 (6 Edw. 7, c. 41), s.78, SALVAGE; *British & Foreign Marine Insurance Co. v. Gaunt* [1921] 2 A.C. 41.

(2) The “sue and labour” clause in a marine policy “is in substance a contract by which the underwriter agrees to pay the assured the expense he may reasonably and properly incur in preventing a loss which, if it occurred, would fall on the underwriter under the other clauses in the policy. Such a contract is not a contract of indemnity in any proper sense” (*per* Lindley L.J., in *Johnstone v. Salvage Association* 19 Q.B.D. 458; citing *Kidstone v. Empire Marine Insurance* L.R. 1 C.P. 535; 2 *ibid.* 357, cited PARTICULAR AVERAGE; *Lohre v. Aitchison* 4 App. Cas. 755).

SUFFER. (1) An annuity, or other life interest, only enjoyable until the beneficiary shall “suffer” anything to deprive him of the right of receiving it, was forfeited by a garnishee order served on the trustees (*Bates v. Bates* [1884] W.N. 129). That case was not followed in *Sutton v. Goodrich* 80 L.T. 765, if it covered moneys actually in the trustees’ hands; see *Re Beaumont* 79 L.J. Ch. 744, cited BELONG; or by a judgment creditor obtaining a charging order (*Roffey v. Bent* L.R. 3 Eq. 759), or registering his judgment as a mortgage against the lands (*Re Moore* 17 L.R. Ir. 549); or the appointment of a receiver (*Re Detmold* 40 Ch. D. 585); or by a bankruptcy when the act of bankruptcy is such as (under the old practice) neglecting to comply with a debtor’s summons (*Ex p. Eyston* 7 Ch. D. 145). But probably *Bates v. Bates* (sup.) may now be regarded as of no authority; for *Sutton v. Goodrich* (sup.) shows that the beneficiary’s “right to receive” arises directly the money comes to the hands of the trustees (see also *Re Sampson* [1896] 1 Ch. 630, cited FORFEITURE), and a garnishee order on the trustees would be a nullity unless the money had come to their hands; and “the result is that a garnishee order cannot create a forfeiture” (*per* Farwell J., *Re Greenwood* [1901] 1 Ch. 887; *Re Clark* 95 L.J. Ch. 325; cp. *Webb v. Stenton* 11 Q.B.D. 518, cited DEBT). See also *Re Sartoris* [1892] 1 Ch. 11, cited WOULD; but see *Ex p. Dawes* 17 Q.B.D. 282, cited WOULD.

(2) Determinable life interest. An interest given to A with a condition for forfeiture if she should alienate or charge it or do or suffer any act whereby it might become vested in any other person was held not to be forfeited on A becoming an enemy within the Trading With the Enemy Act 1939 (c. 89), by continuing to reside in France after that country became enemy territory. A had not “done” or “suffered” any act (*Re Hall* [1944] Ch. 46; *Re Harris* [1945] Ch. 316). See also *Re Gourjus Will Trusts* [1943] Ch. 24; *Re Baring’s Settlement Trusts* [1940] Ch. 737; *Re Hatch* [1948] Ch. 592; *Re Oppenheim’s Will Trusts* [1950] Ch. 633.

(3) “Omit or knowingly suffer”: see *Eastwood v. Ashton* [1913] 2 Ch. 39.

(4) “Suffer an injustice” within meaning of Law of Property Act 1925 (c. 20), s.171(1): see *Re Freeman* [1927] 1 Ch. 479; *Re Greene* [1928] 1 Ch. 528.

“Duly done or suffered”: see DONE; PERMIT.

“Wilfully do or suffer”: see WILFULLY.

See PERMIT; PERMISSION; ALLOW; OMISSION.

SUFFER JUDICIAL PROCEEDING. A debtor in difficulties owing large sums to his father-in-law consulted his father-in-law’s solicitor, who told him he could only act for the father-in-law, and that the debtor must take his own course; the solicitor issued a writ for the father-in-law’s claim, to which the debtor did not appear; judgment by default was obtained and debtor’s goods were seized under an *elegit* and delivered to the father-in-law; the debtor then filed a liquidation petition, employ

ing therein his father-in-law's solicitor; held, that the debtor had not "suffered" a judicial proceeding within Bankruptcy Act 1869 (c. 71), s.92 (see Bankruptcy Act 1914 (c. 59), s.44) (*Ex p. Lancaster* 25 Ch. D. 311).

SUFFER OR PERMIT. See PERMIT.

SUFFERANCE. (1) "There is a great diversity between a tenant at will and a tenant at sufferance; for tenant at will is always by right, and tenant at sufferance entreth by a lawfull lease, and holdeth over by wrong. A tenant at sufferance is he that at the first came in by lawfull demise, and after his estate ended continueth in possession and wrongfully holdeth over" (Co. Litt. 57 b). See hereon *Rouse's Case* Tudor's L.C.R.P. 1.

(2) A sufferance wharf is a wharf in the Port of London the limits of which were set out by an order or minute of the Commissioners of Customs dated May 13, 1789, amongst which are: Fenning's Wharf, Topping's Wharf, Chamberlain's Wharf, Cotton's Wharf, the Depot Wharf, Hay's Wharf, Beal's Wharf, Carpenter Smith's Wharf, Griffin's Wharf, Gun and Shot Wharf, Symon's Wharf, Pickle Herring Upper Wharf, Pickle Herring Lower Wharf, Mark Brown's Wharf, Davis' Wharf, Hartley's Wharf, and Butler's Wharf (11 Vict., c. xviii), on which see *Barber v. Meyerstein* L.R. 4 H.L. 317.

See PERMISSION; BY WHOSE.

SUFFICE. See IT SHALL SUFFICE.

SUFFICIENCY. "Sufficiency" of investments to be "secured": see *Public Trustee v. Blacker-Douglas* [1905] 1 Ir. R. 540.

SUFFICIENT. (1) In Rivers Pollution Prevention Act 1876 (c. 76), s.7, 2nd proviso: see *Brook v. Meltham* [1909] A.C. 438, cited SEWER. See also ADEQUATE.

(2) "Sufficient in . . . character" (Education Act 1944 (c. 31), s.8(1) (b)), see *Wood and Others v. Ealing London B.C.* [1967] Ch. 364).

See INSUFFICIENT.

SUFFICIENT CAUSE. (1) (a) As to what is "other sufficient cause," within Bankruptcy Act 1883 (c. 52), s.7(3) (see now Bankruptcy Act 1914 (c. 59), s.5(3)), for refusing to make a receiving order, see *Ex p. Dixon* 13 Q.B.D. 118; *Ex p. Oram*, *Re Watson* 15 Q.B.D. 399; *Re Robinson* 22 Ch. D. 816; *Re Otway* [1895] 1 Q.B. 812, on which see *Re Leonard* [1897] 1 Q.B. 473; *Re Jubb* [1897] 1 Q.B. 641; *Re Shaw* 83 L.T. 487, followed in *Re Goldberg* 21 T.L.R. 139; see also *Re Carr* 85 L.T. 552, distinguished in *Re Day* 86 L.T. 238; *Re Brindley* [1906] 1 K.B. 377; *Re Sunderland* [1911] 2 K.B. 658, in which case *Re Shaw* was distinguished; *Re a Debtor* [1928] 1 Ch. 655. The debtor's sworn statement of affairs showing a deficiency of over £1,000 and no assets, and no prospects of any coming in, was not of itself "sufficient cause" for dismissing a bankruptcy petition (*Re Field (A Debtor)* [1978] Ch. 371).

(2) As to what is "sufficient cause" for non-payment of rate within Public Health Act 1875 (c. 55), s.256, see *Sheffield Waterworks v. Sheffield Corporation* 55 L.J.M.C. 40; distinguished *Sandgate v. Pledge* 14 Q.B.D. 730; *Dixon v. Blackpool Tramroad Co.* [1909] 1 K.B. 860; *per Bowen L.J.*, in *R. v. Hannam* 34 W.R. 355; *Blackpool Tramway Co. v. Bispham Urban District Council* [1910] 1 K.B. 592.

(3) It was not a "sufficient cause" (Public Health Act 1875, s.305) against an

order under that section (authorising a local authority to enter a house for the purpose of constructing a sufficient water-closet, their notice, under s.36, not having been complied with), to show that the existing sanitary arrangements were sufficient; the justices could not review the order if it was correct in itself and its conditions precedent had been complied with, the only appeal being to the Local Government Board under s.268 (*Robinson v. Sunderland* [1899] 1 Q.B. 751). See **APPEAR**; **SUFFICIENT PRIVY**.

(4) "Sufficient cause" (Registration of Business Names Act 1916 (c. 58), s.8(1) (a)). A mistaken belief that relief would be granted automatically on request was not "sufficient cause" for failing to register (*Watson v. Park Royal (Caterers) Ltd.* [1961] 1 W.L.R. 727).

(5) Removal from register of "any entry made without sufficient cause" (Patents Designs and Trade Marks Act 1883 (c. 57), s.90(1); cp. Patents Act 1949 (c. 87), s.75) does not mean that there must be an absence of sufficient cause at the time of the registration; "if an entry is at any time on the register without sufficient cause, however it got there, it ought to be treated as covered by the words of the section" (*Re Batt* [1898] 2 Ch. 441; affirmed in House of Lords, nom. *Batt v. Dunnett* [1899] A.C. 428).

(6) The liquidation of a company was a "sufficient cause" under R.S.C., Ord. 50, r. 1(6) for not converting a changing order nisi over the company's land obtained by a judgment creditor into an order absolute (*Roberts Petroleum v. Bernard Kenny* [1983] 2 W.L.R. 305).

"Good and sufficient cause": see **GOOD CAUSE**.

"Sickness or other sufficient cause": see **SICKNESS**.

"Reasonable or sufficient cause": see **REASONABLE**.

Cp. **SUFFICIENT REASON**.

SUFFICIENT CERTIFICATE. "Good and sufficient certificate" of a life (in a lease for lives) being still alive; see *Randle v. Lory* 6 A. & E. 218. See **CERTIFICATE**.

SUFFICIENT CONSIDERATION. "Valuable and sufficient consideration": see **VALUABLE**.

SUFFICIENT DEBT. A right in equity to a sum of money, though not a debt in law, is a "sufficient" debt to support a petition under Bankruptcy Act 1883 (c. 52), s.125 (see Bankruptcy Act 1914 (c. 59), s.130) (*Re Outram* 63 L.J.Q.B. 308).

SUFFICIENT DISTRESS. (1) It is submitted that goods available as a "sufficient distress" means goods of such value in the aggregate as may reasonably be estimated to be sufficient, when sold, to pay the rent due together with all expenses of levy and sale: see hereon *Parrey v. Duncan* 7 Bing. 243; *Inkop v. Morchurch* 2 F. & F. 501; *Gillam v. Arkwright* 16 L.T.O.S. 88. Cp. **EXCESSIVE**.

(2) A tithe owner in estimating whether he had a "sufficient distress" (Tithe Act 1836 (c. 71), s.82), had to include the prospective value of growing crops, although not capable of present realisation (*Ex p. Arnison* L.R. 3 Ex. 56). See now as to recovery of tithe rent charge, Tithe Act 1891 (c. 8), s.2.

SUFFICIENT EVIDENCE. (1) Anything which is duly prescribed as "sufficient evidence" of a fact, is enough evidence thereon to go to the jury; but the other side is not precluded from controverting it by other evidence (*Barraclough v. Greenhough* L.R. 2 Q.B. 612), but a certificate of justices which (by Lands Clauses Consoli-

dation Act 1845 (c. 18), s.17) was “sufficient evidence” that the capital of an undertaking had been subscribed was, *semble*, conclusive evidence thereof (*per* Jessel M.R., *Ystalyfera Iron Co. v. Neath Railway* L.R. 17 Eq. 142). See also *Bishop v. Helps* 2 C.B. 45, cited *BY POST*.

(2) So, an order of discharge which was “ ‘sufficient evidence’ of a bankruptcy and of the validity of the proceedings thereon” (Bankruptcy Act 1869 (c. 71), s.49; *cp.* now Bankruptcy Act 1914 (c. 59), s.28(3)), was conclusive evidence (*Lewis v. Leonard* 5 Ex. D. 165).

(3) The Board of Trade’s account and proof of payment of the expenses paid by the Board to or for a distressed seaman is “sufficient evidence that the expenses were incurred or repaid under this Act by or on behalf of the Crown” (Merchant Shipping Act 1894 (c. 60), s.193(3)—see Merchant Shipping Act 1906 (c. 48), s.42(3)), which substitutes the phrase *prima facie* evidence—on that Bigham J., held that “sufficient” meant “conclusive” evidence (*Board of Trade v. S.S. Glenpark* [1903] 2 K.B. 324); on appeal it was unnecessary to decide the point, but the leaning of the court seemed to be that “sufficient evidence” means satisfactory evidence in the absence of an answer.

(4) The decision of Bigham J., was, in another case, urged on the C.A. as an authority for saying that the provision that the certificate of the chief officer of a police force was “sufficient evidence” of approved service of a constable (Police Act 1890 (c. 45), s.4(2)) meant that it was conclusive; again the C.A. considered it unnecessary to decide the point, but Collins M.R., said, “Personally, I am not satisfied that ‘sufficient evidence’ means conclusive evidence” (*Garbutt v. Durham Committee* [1904] 2 K.B. 523); and the House of Lords held that “sufficient evidence” did not, in this connection, mean “conclusive evidence” (*ibid.* [1906] A.C. 291).

(5) An analyst’s certificate was “ ‘sufficient evidence’ of the facts herein stated” (Sale of Food and Drugs Act 1875 (c. 63), s.21), but it was not conclusive and might be rebutted (*Hewitt v. Taylor* [1896] 1 Q.B. 287).

(6) So, though a certificate of a company’s required capital having been subscribed or paid-up and an order for borrowing made, was “sufficient evidence” of the fact (Companies Clauses Consolidation Act 1845 (c. 16), s.40), yet “it would not be conclusive evidence as between the directors and the company if no such order had been made; still it would be sufficient evidence upon which any lender might reasonably act” (*per* Wood V.C., *Fountaine v. Carmarthen Railway* L.R. 5 Eq. 323).

(7) A receipt in a deed or indorsed thereon was “sufficient evidence”, in favour of a subsequent purchaser, of the payment of the consideration (Conveyancing Act 1881 (c. 41), s.55; see Law of Property Act 1925 (c. 20), s.68); see thereon *Lloyd’s Bank v. Bullock* [1896] 2 Ch. 192.

(8) “Sufficient evidence of the due making and existence of a municipal bye-law (Municipal Corporations Act 1882 (c. 50), s.24): see *Robinson v. Gregory* [1905] 1 K.B. 534.

(9) “Sufficient evidence of belief that an explosive was likely to become dangerous (Coal Mines Regulation Act 1896 (c. 43), s.6), see *Jones v. Robson* [1901] 1 K.B. 673, cited *LIKELY*.

(10) The statements of fact in an order of a Master in Lunacy in England, *e.g.* that the person to whom it refers is of unsound mind, are *prima facie* proved by the order, and, if uncontradicted, it ought to be regarded as sufficient evidence of those facts not only in this country but in all His Majesty’s dominions; therefore, such an order was “good and sufficient evidence” of the inability, “by reason of accident, or

misfortune,” of the person of unsound mind to appear as a defendant, within Ceylon Civil Procedure Code, 1889, CXII, Art. 87 (*Harvey v. The King* [1901] A.C. 601).

(11) (Administration of Estates Act 1925 (c. 23), s.36(7)). These words do not mean “conclusive evidence” (*Re Duce & Boots Cash Chemists (Southern) Ltd.’s Contract* [1937] Ch. 642).

(12) “Sufficient evidence” (Rights of Way Act 1932 (c. 45), s.1(1)) had to include evidence of overt acts on the part of the landowner such as to show to the public at large that he had no intention to dedicate (*Fairey v. Southampton C.C.* [1956] 2 Q.B. 439).

See CONCLUSIVE EVIDENCE; EVIDENCE; PRIMA FACIE EVIDENCE; SATISFACTORY.

SUFFICIENT FACILITIES. See FACILITIES.

SUFFICIENT INCOME. See *Re Pedrotti* 29 L.J. Ch. 92; distinguished by Farwell J., *Re Richards* [1902] 1 Ch. 76.

SUFFICIENT INDICATION. A defendant in a county court action, to which he had a defence under the Gaming Act 1892 (c.9) (see GAMING CONTRACT), pleaded the following special defence, “That the present action is null and void, and the defendant relies on the Gaming Act 1845 (c. 109), s.18”: held, that that was otherwise to “sufficiently indicate the nature of the defence” within County Court Rules 1903, Ord. 10, r. 18 (*Renton v. King* 21 T.L.R. 577). See STATUTORY; see also STATUTE OF LIMITATIONS.

SUFFICIENT INTEREST “Sufficient interest” (R.S.C., Ord. 53, r. 3(5)). The House of Lords held that, as a matter of general principle, one taxpayer had no “sufficient interest” within the meaning of this rule to entitle him to ask the court to investigate the tax affairs of another taxpayer or to complain that the latter had been under or over-assessed. So that where the Inland Revenue granted a tax amnesty to Fleet Street casuals who had been evading income tax, and the legality of the amnesty was challenged by the National Federation of Self-Employed and Small Businesses, it was held that the Federation did not have a “sufficient interest” for the purposes of this rule to apply for a judicial review of the actions of the Board of Inland Revenue (*I.R.C. v. National Federation of Self-Employed and Small Businesses* [1981] 2 W.L.R. 722). Where a local authority resolved to close a gypsy caravan site, but made it clear that there would be no evictions and that services to the site would be maintained, it was held that a gypsy living on the site had “sufficient interest” within the meaning of s.31(3) of the Supreme Court Act 1981 (c. 54) to apply under Ord. 53 for judicial review of the authority’s decision to close the site and not to provide an alternative (*R. v. Secretary of State for the Environment, ex p. Ward* [1984] 2 All E.R. 556).

SUFFICIENT INTIMATION. See *Cran v. Watt* 38 Sc. L.R. 593, cited SUCCESSIVE.

SUFFICIENT JUSTIFICATION. See INTERFERE.

SUFFICIENT LIGHTING. The effective provision of “sufficient and suitable lighting” within s.5(1) of the Factories Act 1961 (c. 34) requires it to be switched on whenever the natural lighting is insufficient (*Thornton v. Fisher & Ludlow* [1968] 1 W.L.R. 655).

SUFFICIENT PASTURE. The measure of what is sufficient pasture (*sufficientem pasturam quantum pertinet ad tenementa sua*, Statute of Merton, 20 Hen. 3, c. 4), to be left by a lord of a manor when he makes an improvement is that amount which will be sufficient for the full enjoyment by all the commoners of all their existing rights, whether such rights are likely to be exercised or not (*Robertson v. Hartopp* 43 Ch. D. 484, in which case *Lake v. Paxton* 10 Ex. 196, and *Lascelles v. Onslow* 2 Q.B.D. 433, were questioned, and not followed).

See PASTURE.

SUFFICIENT PRIVY. (1) (a) “A sufficient watercloset, earthcloset, or privy” (Public Health Act 1875 (c. 55), s.35) did not mean a “separate” convenience for each house; if one was, in fact, “sufficient” for two or more houses in common, the statute was satisfied (*R. v. Clutton* 4 Q.B.D. 340).

(b) Under the same words in s.36, the local authority could not pass a general resolution requiring a particular kind of convenience to be furnished; it could only require a “sufficient” convenience in each case (*Wood v. Widnes* [1898] 1 Q.B. 463, following *Tinkler v. Wandsworth* 27 L.J. Ch. 342; cp. *Ex p. Whitchurch* and other cases under NECESSARY). See also *Carlton Main Colliery Co. v. Harmsworth Rural District Council* [1922] 2 Ch. 609. See SUFFICIENT CAUSE.

(2) The magistrate had no power to question an order, under Metropolis Management Act 1855 (c. 120), s.81, for a “sufficient watercloset or privy,” etc.; his power thereunder was to determine whether or not the order had been complied with (*St. James, Clerkenwell v. Feary* 24 Q.B.D. 703).

SUFFICIENT PURPOSE. See REASONABLE AND SUFFICIENT.

SUFFICIENT REASON. (1) The “sufficient reason” which, under Common Law Procedure Act 1854 (c. 125), s.11 (see Arbitration Act 1950 (c. 27), s.4), would induce the court not to stay an action regarding matters which the parties have agreed shall be determined by arbitration, includes cases where fraud or immorality is charged and the person so charged objects to arbitration (*Russell v. Russell* 14 Ch. D. 471; *Barnes v. Youngs* [1898] 1 Ch. 414), or where defendant’s object is delay (*Lury v. Pearson* 1 C.B.N.S. 639), or he has obtained time to plead on terms of accepting short notice of trial (*Smith v. British Marine* [1883] W.N. 176), or where submission has been revoked (*Randell v. Thompson* 1 Q.B.D. 748), or the arbitrator chosen is not impartial (*Pickthall v. Merthyr* 2 T.L.R. 805). See also *Freeman v. Chester Rural Council* [1911] 1 K.B. 783; *Bristol Corporation v. Aird* [1913] A.C. 241.

(2) “Good and sufficient reason” for arrest of a ship (R.S.C., Ord. 29, r. 18 now Ord. 75, r. 7); see *The Crimdon* [1900] P. 171.

(3) “Sufficient reason for bringing the action in the High Court” (County Courts Act 1934 (c. 53), s.47(3) (a)): see *Finch v. Telegraph Construction and Maintenance Co.* [1949] 1 All E.R. 452.

“Good and sufficient reason” for lessor withholding assent to an assignment of a lease: see UNREASONABLY.

Cp. GOOD CAUSE; GOOD REASON; SUFFICIENT CAUSE.

SUFFICIENT REPAIR. See REPAIR.

SUFFICIENT SANITARY CONVENIENCE. (Factory and Workshop Act 1901 (c. 22), s.9): see *Tracey v. Pretty* [1901] 1 K.B. 444, cited SANITARY.

SUFFICIENT SECURITY. (1) The “sufficient security” which a plaintiff company may be ordered to give under Companies Act 1862 (c. 89), s.69 (see Companies Act 1948 (c. 38), s.447), is the amount of the probable costs which the defendant will be put to (*Imperial Bank of China v. Bank of Hindustan* 1 Ch. 437; *Dominion Brewery v. Foster* 77 L.T. 507, where security for £600 was ordered).

(2) “Sufficient security,” within a solicitor’s duty respecting an investment, means sufficient in point of law, and does not comprehend an inquiry as to value (*Hayne v. Rhodes* 8 Q.B. 342).

SUFFICIENT WATER. When a charterparty provides that the ship shall “discharge in a dock as ordered on arriving, if sufficient water, or so near thereunto as she may safely get, always afloat,” the words “if sufficient water” “are introduced in the interest of the shipowner, and restrict the generality of the power to name a dock. The obligation of the shipowner is to proceed to the dock named if there is sufficient water to enter the dock when the order is given; and if there is not then sufficient water, the ship is not bound to discharge in the dock named” (*per* Cave J., *Allen v. Coltart* 11 Q.B.D. 782).

SUFFICIENT WAYLEAVE. See **WAY**.

SUFFICIENTLY. (1) Leave to serve a writ out of the jurisdiction will not be granted unless it “sufficiently appear” to the court that the case is a proper one (R.S.C., Ord. 11, r. 4). The court must be satisfied that there is “a good arguable case” (*Vitkovice Horni a Hutni Tezirstvo v. Korner* [1951] A.C. 869).

(2) “Sufficiently and securely fenced” (Threshing Machines Act 1878 (c. 12), s.1). A fence which had to be placed in position by a man engaged on other work each time a certain operation was started, was not “sufficiently” fenced (*Jones v. Richards* [1955] 1 W.L.R. 444).

See **SERVED**; **SUFFICIENT INDICATION**.

SUFFRAGAN. “‘Suffragan’ is a word used in the Suffragan Bishops Act 1534 (c. 14), and it signifies a titular bishop appointed to helpe and assist the bishop of the diocese in his spirituall function” (Termes de la Ley); “a vicegerent of a bishop” (2 Inst. 79). See hereon Phil. Ecc. Law, 76—80.

“Suffragan Bishop.” Stat. Def., Church Property (Miscellaneous Provisions) Measure 1960 (8 & 9 Eliz. 2, No. 1), s.28; Clergy Provisions Measure 1961 (No. 3), s.46(1).

SUGAR. Stat. Def., Sugar Industry (Reorganisation) Act 1936 (c. 18), s.32(1); Customs and Excise Act 1952 (c. 44), s.132(4); Finance Act 1968 (c. 44), s.58(5); Alcoholic Liquor Duties Act 1979 (c. 4), ss.37(5), 50(4), 52(4).

SUGDEN'S ACTS. Illusory Appointments Act 1830 (c. 46).

Debts Recovery Act 1830 (c. 47).

Infants Property Act 1830 (c. 65).

To improve Chancery Practice: Contempt of Court Act 1830 (c. 36); Illusory Appointments Act 1830 (c. 46); Debts Recovery Act 1830 (c. 47); Transfer of Trust Estates Act 1830 (c. 60); Contempt of Court Act 1832 (c. 58).

Judgments Act 1839 (c. 11), amended by Judgments Act 1855 (c. 15).

See also **ST LEONARDS' (Lord) ACTS**.

SUGGESTION. See CHARGE OF FRAUD.

SUICIDE. (1) “Suicide” does not, necessarily, involve the idea of a felonious self-destruction. To “commit suicide” is for a person voluntarily to do an act (or, as it is submitted, to refrain from taking bodily sustenance), for the purpose of destroying his own life, being conscious of that probable consequence, and having at the time sufficient mind to will the destruction of life (*Clift v. Schwabe* 3 C.B. 437). In that case the meaning of this word is elaborately discussed, and its history is very learnedly treated by Pollock C.B., who, however, was in the minority of the Exchequer Chamber in upholding the direction of Cresswell J., at the trial that “suicide” meant the voluntary self-destruction of a man who at the time was “able to distinguish between right and wrong, and to appreciate the nature and quality of the act that he was doing, so as to be a responsible moral agent.” The opposite view, and the one which received the sanction of the majority of the court, is thus expressed by Patteson J., “Now the words themselves”—words appearing in a life policy, and exonerating the insurers if the insured should “commit suicide”—“are large enough to embrace all self-destruction as well as self-murder; not, indeed, as was admitted in *Borrodaile v. Hunter* (12 L.J.C.P. 225), to embrace cases of mere accident, or of insanity extending to unconsciousness of the act done or of its physical consequences—because such cases, although comprehended in the very words themselves, cannot be considered to have been in the contemplation of the contracting parties— but clearly embracing an act of self-destruction committed by a person who was aware of the probable consequences of the act, and intended that consequence to follow.” *Clift v. Schwabe* was followed in *Dufaur v. Professional Life Assurance* 27 L.J. Ch. 817. It was also discussed and approved in *Re Davis* [1968] 1 Q.B. 72.

(2) As to construing a clause in a life policy against suicide as a condition precedent to recovering on the policy even by its assignee, see *Ellinger v. Mutual Life Insurance* [1904] 1 K.B. 832; [1905] 1 K.B. 31; cp. *Harvey v. Ocean Accident Corporation* [1905] 2 Ir. R. 1, cited ACCIDENT.

See DIE BY HIS OWN HANDS; FELO DE SE; MURDER.

SUING. See SUE AND LABOUR.

SUIT. (1) Though it has been said that “suit” is a term of wider signification than “action,” and may include proceedings on a petition (*Re Wallis* 23 L.R. Ir. 7; see DECREE; but see *Guthrie v. Fisk* 3 B. & C. 183, cited SUE), yet, generally speaking, the two words are very nearly synonymous (see Judicature Act 1873 (c. 66), s.100; Judicature Act 1925 (c. 49), s.225) and (except by an interpretation clause) neither includes a petition (see SUE; ACTION). So, a mortgagee’s petition for payment out of a fund in court, was not a “suit” to recover interest, within Real Property Limitation Act 1833 (c. 27), s.42 (cp. Limitation Act 1939 (c. 21), s.17) (*Edmunds v. Waugh* L.R. 1 Eq. 418; *Re Marshfield* 34 Ch. D. 721; but see *Re Stead* 2 Ch. D. 713); still less was the mortgagee’s right of retainer out of proceeds of sale such a suit (*Re Marshfield sup.*). *Edmunds v. Waugh* and *Re Marshfield* were approved, while *Re Stead* was distinguished, in *Re Lloyd* [1903] 1 Ch. 385. See RECOVER.

(2) As to the effect of “action” and “suit” being used together, see *Sutton v. Sutton* 22 Ch. D. 511, cited CHARGED UPON.

(3) “And for this word (Sectas) it is to be known that by release of all ‘suits,’ executions are barred, for none shall have execution without suit or prayer” (*Altham’s Case* 8 Rep. 153 b). See ACTIONS.

(4) A “suit or proceeding,” under Church Discipline Act 1840 (c. 86), s.20, was only commenced when the accused was served with a citation under ss.9, 10 (*Ditcher v. Denison* 31 L.T.O.S. 61).

(5) “Costs of suit” will not include costs of arranging or carrying out a compromise (*Lancaster v. Lancaster* [1896] P. 118).

(6) “Suit of court” is that attendance which the feudatory tenant owes to his Lord’s Court (Cowel, *Suit*; Jacob, *Suit*). Cp. SERVICE.

(7) “Suit” (Customs Consolidation Act 1876 (c. 36), s.257). A claim by the Commissioners of Customs and Excise to have certain documents they had seized condemned by the court, was not a “suit” within the meaning of the section (*Commissioners of Customs and Excise v. Sokolow’s Trustee* [1954] 2 Q.B. 336).

(8) “Suit” (Hague Rules, art. 3, r. 6) includes an arbitration (*The Merak* [1965] P. 223).

Stat. Def., Crown Suits etc. Act 1865 (c. 104), s.6.

See CRIMINAL SUIT; FRESH SUIT; PROCEEDING.

SUITABLE. (1) Wheels “suitable only to run on the rail” of a tramway (Tramways Act 1870 (c. 78), s.62): see *Manchester v. Andrews* 5 T.L.R. 470.

(2) “Suitable” (Fertilisers and Feeding Stuffs Act 1926 (c. 45), s.1): see *Pulling v. Lidbetter Ltd.* 93 L.J.K.B. 542.

(3) (Road and Rail Traffic Act 1933 (c. 53), s.11) meant something more than adequate when considering whether “suitable transport facilities” existed and whether they were or would have been in excess of requirements; this was to be considered in relation to current industrial and commercial conditions (*Great Western and London, Midland & Scottish Railways v. Smart* 24 Ry. & Can. Tr. Cas. 273).

(4) “Is suitable” (Factories Act 1937 (c. 67), s.54(2), now Factories Act 1961 (c. 34), s.70(2)) means that the bakehouse “is suitable” at the time that the appeal comes before the court (*Fulham Borough Council v. A. B. Hemmings Ltd.* [1940] 2 K.B. 669).

(5) “Suitable accommodation for clothing” (Factories Act 1937 (sup.), s.43(1), now Factories Act 1961 (sup.), s.59(1)); the risk of theft must be considered in deciding the suitability of accommodation (*McCarthy v. Daily Mirror Newspapers* [1949] 1 All. E.R. 801).

(6) “Sufficient and suitable accommodation in the way of sanitary convenience” (Factory and Workshop Act 1901 (1 Edw. 7, c. 22), s.9—see now Factories Act 1961 (c. 34), s.7): see *Tracey v. Pretty* [1901] 1 K.B. 444, cited SANITARY.

(7) “Suitable goggles . . . to protect the eyes” (Factories Act 1937 (c. 67), s.49, now Factories Act 1961 (c. 34), s.65), means well adapted for the process under consideration and well adapted for the wearer in that they must fit him (*Daniels v. Ford Motor Co.* [1955] 1 W.L.R. 76). Goggles, to be “suitable” within this section, must be effective to keep foreign bodies out of the workers’ eyes in all reasonably foreseeable circumstances, having regard to the nature of the job (*Rodgers v. Blair (George) & Co.* (1971) 11 K.I.R. 391).

(8) “Suitable guard rails” (Building (Safety, Health and Welfare) Regulations 1948 (No. 1145), reg. 27(2)(a)) does not necessarily mean two or more rails, one above the other. A single guard rail on a stair might, in certain circumstances, be sufficient (*Astell v. London Transport Board* [1966] 1 W.L.R. 1047).

(9) (a) In considering whether alternative accommodation is suitable within the Rent Acts, the absence of a garage is not to be considered (*Briddon v. George* [1946] 1 All E.R. 609); the fact that part of the alternative accommodation is used

for business purposes does not prevent the Acts from applying (*Luttrell v. Addicott* [1946] 2 All E.R. 625); the fact that there is only loss to the tenant and only gain to the landlord is relevant (*Cresswell v. Hodgson* [1951] 2 K.B. 92).

(b) In considering whether alternative accommodation is “reasonably suitable . . . as regards extent and character” for the purposes of the Rent Act 1968 (c. 23), Sched. 3, Part IV, para. 3(1)(b), now Rent Act 1977 (c. 42), Sched. 15, Part IV, para. 5(1)(b) environmental considerations such as noise and smell should be taken into account (*Redspring v. Francis* [1973] 1 W.L.R. 134), but not social considerations such as the satisfaction of cultural interests and the society of friends (*Siddiqui v. Rashid* [1980] 1 W.L.R. 1018). In determining suitability it is permissible to have regard to the environment to which the tenant had become accustomed, but proximity to entertainment, recreation or sport, or the availability of paddocks or stables, were not relevant (*Hill v. Rochard* [1983] 1 W.L.R. 478).

(c) An offer of accommodation which is to be shared is not suitable for a tenant with a house to himself (*Barnard v. Towers* [1953] 1 W.L.R. 1203).

(d) Accommodation which consists of part of the accommodation occupied by the tenant can be “suitable” alternative accommodation within the meaning of s.10(1)(a) of the Rent Act 1968 (c. 23), even where the part which will be excluded is not sub-let but is actually occupied by the tenant (*Myholysyn v. Noah* [1970] 1 W.L.R. 1271; distinguishing *MacDownell v. Daly* [1969] 1 W.L.R. 1482).

(e) “Suitable to the needs of the tenant” (Rent Act 1968 (c. 23), Sched. 3, para. 3(1)(b)). To be “suitable” the alternative accommodation must be somewhere where the tenant can live reasonably comfortably and in the style to which he is accustomed, and it is proper to take into account environmental matters insofar as they affect the suitability of the accommodation (*Redspring v. Francis* [1973] 1 W.L.R. 134).

(f) “Suitable to the needs of the tenant” (Housing Act 1980 (c. 51), Sched. 4, Pt. 11, para. 1(1)(b)). A tenant’s need for a garden in which to pursue his hobbies including gardening, was capable of being a “need” for the purposes of this schedule (*Enfield London Borough Council v. French* (1985) 49 P. & C.R. 223).

(g) “Suitable alternative . . . accommodation” (Land Compensation Act 1973 (c. 26), s.39). The section does not impose on the local authority a duty to give priority over other people on the housing list, and temporary accommodation can be “suitable” within the meaning of this section (*R. v. Bristol Corporation, ex p. Hendy* [1974] 1 W.L.R. 498).

(10) (a) “Suitable employment” within the meaning of Workmen’s Compensation Act 1906 (c. 58), Sched. 1, s.3: see *Eyre v. Houghton Main Colliery Co.* [1910] 1 K.B. 695; *Elliott v. Curry & Dodd* [1912] W.C.R. 188; *Jackson v. Hunslet Engine Co.* [1916] 2 K.B. 8; *Port of London Authority v. Gray* [1919] 1 K.B. 65; *Ling v. De Dion Bouton* [1920] 1 K.B. 88; *Colquitt v. United Steel Co.* 21 B.W.C.C. 410.

(b) “Suitable employment” (Workmen’s Compensation Act 1925 (c. 84), s.9(3)(i)) meant suitable, not for anybody, but for the particular man (*Hoe & Co. v. Dirs* [1941] 1 K.B. 34).

(c) “Suitable employment” (Redundancy Payments Act 1965 (c. 62), s.2(4)). An offer of employment to be “suitable” within the meaning of this section should be substantially equivalent to the employment which has ceased, and the fact that it is to be at the same salary does not necessarily make it “suitable” (*Taylor v. Kent County Council* [1969] 2 Q.B. 560). It is a question of fact and degree for the industrial tribunal (*Collier v. Smiths Dock Co.* [1969] 2 Lloyd’s Rep. 222). The period for which it is anticipated the new employment will last is irrelevant (*Morganite Crucible Co. v. Street* [1972] 1 W.L.R. 918). An offer to an ex headmaster of a post on a

mobile pool of teachers was not "suitable" (*Taylor's case, supra*). Employment as a shipwright for an ex chargehand shipwright was "suitable" (*Collier's case, supra*). A collective offer to 10 employees which would benefit two of them but mean less pay for the others was not "suitable" within the meaning of this section (*Davis (E. & J.) Transport v. Chattaway (D.)* [1972] I.C.R. 267). An offer of alternative employment at the same wage but which might reduce the employee's status was held not "suitable" (*Harris v. Turner (E.) & Sons (Joinery)* [1973] I.C.R. 31). But where only a slight loss of status was involved the suitability of the alternative employment was not invalidated (*Kane v. Raine & Co.* [1974] I.C.R. 300).

(11) "Suitable land for the purpose of allotments" (Small Holdings and Allotments Act 1908 (c. 36), s.25(2)): see *Woodford Land & Building Co. v. Woodford Urban District Council* 19 L.G.R. 559.

(12) "Other suitable material," in a patent specification: see *Ralston v. Smith* 11 H.L. Ca. 223; in a like connection, "any other suitable driving motion": see *Marsden v. Moser* 73 L.T. 667.

(13) A dwelling-house, costing £600, "with suitable offices" includes, in the latter word, a pony stable, which the vassal in a feu charter may erect 12 years after the completion of his house without further assent from his superior, although there be a proviso that "no buildings of any other description shall be built on the ground," for the latter words refer to a factory or some other building different from a dwelling-house or part of it (*Wyllie v. Dunnett* 36 Sc. L.R. 759).

(14) "Suitable to, and used for the purposes of": see *Re Manchester Carriage Co. and Ashton-under-Lyne* 68 J.P. 576, and *Manchester Carriage Co. v. Swinton* 90 L.T. 795; affirmed in House of Lords [1906] A.C. 277, cited USED.

(15) "Suitable to be retained as heirlooms": see *Re Smith-Bosanquet* 53 S.J. 430.

(16) "Suitable arrangements (Education Act 1944 (c. 31), s.39). An education authority which only reimbursed the parents of children the cost of bringing them by public transport to within three miles from the school had not made "suitable arrangements" for their transport (*Surrey C.C. v. Minister of Education* [1953] 1 W.L.R. 516).

(17) "Suitable" (Education Act 1944 (c. 31), ss.71, 76). Education provided by a school catering for the special traditions and characteristics of a minority sect could be "suitable" for the purposes of these sections (*R. v. Secretary of State for Education and Science, ex p. Talmud School Trust, The Times*, April 12, 1985).

(18) A container is "suitable" (Road Traffic Act 1962 (c. 59), s.2(5), now Road Traffic Act 1972 (c. 20), s.10(6) as amended) for a blood specimen if the specimen, having been carried in it, can be analysed (*Langridge v. Taylor* [1972] R.T.R. 157), and the mere fact that the character of the specimen has changed does not necessarily mean that the container was unsuitable (*Clark v. Stenlake* [1972] R.T.R. 276). Where the lid of a defendant's blood specimen container is insecurely put on by the constable, so that it is loose when it reaches the analyst, it is not a "suitable container" (*Hawkins v. Ebbutt* [1975] R.T.R. 363). Nor is one from which alcohol could have leaked (*R. v. Sodo* [1975] R.T.R. 357).

(19) "Goods of a kind suitable for use as parts of" (Finance (No. 2) Act 1975 (c. 45), s.17, Sched. 7, Group 3). Here "suitable" means "designed" or "adapted for" (*Customs and Excise Commissioners v. Mechanical Services (Trailer Engineers)* (1979) 1 W.L.R. 305).

"Suitable home": see HOME.

"Suitable residence and holding": see RESIDE.

"House suitable for occupation by persons of the working classes": see HOUSE.

"Suitable to": see CORRESPOND.

“Sufficient and suitable lighting”: see SUFFICIENT.

SULING. See SWOLING.

SULLERYE. “Signifieth a plow-land” (Co. Litt. 5 a). See PLOWLAND.

SULLINGS. “Sullings are taken for elders,” *i.e.* elder trees (Co. Litt. 4 b).

SUM. (1) A “sum” does not necessarily mean an amount expressible in some coin of the realm; *e.g.* the sale of each copy of a copyright painting is a separate offence (*Ex p. Beal* L.R. 3 Q.B. 387, cited COPY), and “for every such offence” the offender forfeits “a sum not exceeding £10” (Fine Arts Copyright Act 1862 (c. 68), s.6—cp. now Copyright Act 1911 (c. 46), s.11); that does not mean that the minimum penalty for every offence must be one farthing, for that would make the penalty to fluctuate according to the actual coinage of the country, and there is nothing in the enactment to indicate that the “sum” must have an equivalent in a coin of the realm; therefore, where the proof was that there had been sold, 1,012,600 infringing copies, that did not involve penalties of, at least, a like number of farthings, and it was held that the justice of the case was met by a penalty of an aggregate of fractions amounting to £200 (*Hildesheimer v. Faulkner* [1901] 2 Ch. 552, overruling on this point *Ellis v. Marshall* 64 L.J.Q.B. 757, *Baschet v. London Illustrated Standard Co.* [1900] 1 Ch. 73).

(2) “Sum” in Trading With the Enemy Amendment Act 1914 (c. 12), s.2(1): see *Re Hallenstein* [1922] 1 Ch. 355.

(3) The words “any sum due at the passing of this Act” in s.8(1) of the Distribution of German Enemy Property Act 1949 (c. 85) were not appropriate to describe a claim for unliquidated damages for breach of covenant, because there was no sum due until it was established that there was in fact a breach of covenant and, that being established, the amount had been quantified by judgment (*Re Collbran* [1956] Ch. 250).

(4) “Provided the sum or damages sought to be recovered shall not exceed £50”; “sum,” in such a connection, means “debt” (*Joule v. Taylor* 7 Ex. 58).

(5) A bequest of “the sum of” a named amount in a named investment, is to some extent an indication that the bequest is demonstrative; whilst the absence of such phrase rather indicates that the bequest is specific (*per* North J., *Re Pratt* [1894] 1 Ch. 491; commenting on *Mytton v. Mytton* L.R. 19 Eq. 30).

(6) “Sum of money,” in regard to *ad valorem* stamp duty, will generally mean the principal sum, not a sum compounded of principal and interest (*Pruessing v. Ing* 4 B. & Ald. 204).

(7) “Sum of money,” (Courts (Emergency Powers) Act 1914 (c. 78), s.1(1)): see *Dobb v. Henry Dobb Ltd.* [1918] 1 Ch. 443.

(8) As to the meaning of the phrase “sums of money secured on mortgage of any of my freehold and leasehold properties,” in a will, see *Re Beirnsstein* 94 L.J. Ch. 62.

(9) “Sum of money at stated periods” (Stamp Act 1891 (c. 39), Sched. I, “Bond”). A covenant to pay a specified sum of money on the first of each month was held to be a covenant to pay a sum of money at stated periods as distinguished from an annuity (*Hennell v. Inland Revenue Commissioners* [1933] 1 K.B. 415).

(10) A husband’s default in paying school fees under a maintenance order is a “default in payment of a sum of money” (Debtors Act 1869 (c. 62), s.4), (*Farrant v. Farrant* [1957] P. 188).

(11) "Sum available for distribution." As to the construction of a clause in a service agreement providing for a commission based on "the sum available for distribution" by the employer company in each year, see *Edwards v. Saunton Hotel Co.* 168 L.T. 30.

(12) "Lump sum" (Finance (New Duties) Act 1916 (c. 11), s.1(4)). "Sum" had two connotations, that of an aggregate of currency tokens, *e.g.* so many pounds and shillings, and that of an addition of individual amounts to create a sum (*Customs and Excise Commissioners v. Queen's Park Rangers Football & Athletic Club* [1952] 2 Q.B. 918).

(13) "Sum to be paid into the Supreme Court" (Leasehold Reform Act 1967 (c. 88), s.27(5)). In computing this figure arrears of rent which are statute barred are to be disregarded (*Re Howell's Application* [1972] Ch. 509).

(14) "Sum insured" in a fire insurance policy: see *Kennedy v. Boolarra Butter Factory Pty.* [1953] V.L.R. 548.

Default in "payment of a sum of money": see PAYMENT.

"Net sum": see CLEAR.

See PERIODICAL; REASONABLE SUM; RECOVER; SUMS.

SUM ADJUDGED. (1) The "sum adjudged" to be paid on a conviction, "refers to the sum in which the party is convicted, and does not include the costs" (*per* Crompton J., delivering the judgment, *R. v. Warwickshire Justices* 25 L.J.M.C. 119). This also applied to s.50 of the Metropolitan Police Courts Act 1839 (c. 71) (*R. v. London Quarter Sessions Ex. p. Bowes* [1951] 1 K.B. 383). But in the Summary Jurisdiction Act 1879 (c. 49), s.49, "the expressions 'sum adjudged to be paid by a conviction' and 'sum adjudged to be paid by an order,' respectively, include any costs adjudged to be paid by the conviction or order, as the case may be, of which the amount is ascertained by such conviction or order." See ASCERTAINED; OPINION. See also *R. v. Novis* [1905] 2 K.B. 456, cited FINE.

(2) "Sum adjudged" (Public Health Act 1848 (c. 63), s.135) (*cp.* Public Health Act 1875 (c. 55), s.269) meant the sum in respect of which the adjudication was made, *i.e.* the sum adjudicated upon (*Ricardo v. Maidenhead* 2 H. & N. 257).

Stat. Def., Criminal Justice Administration Act 1914 (c. 58), s.41; Money Payments (Justices Procedure) Act 1935 (c. 46), s.15(e); Criminal Justice Act 1948 (c. 58), s.80(1).

SUM CERTAIN. (1) "Sum certain" (Civil Procedure Act 1833 (c. 42), s.28; *cp.* Law Reform (Miscellaneous Provisions) Act 1934 (c. 41), s.3) was probably not construed so strictly as "certain time"; *semble*, it was immaterial how the "sum" became "certain," it being "certain" when ascertained under the written instrument (*Geake v. Ross* 44 L.J.C.P. 315; *Mildmay v. Methuen* 3 Drew. 91; but see *Hill v. South Staffordshire Railway* L.R. 18 Eq. 154, and *per* Jessel M.R., *Ward v. Eyre* 49 L.J. Ch. 659; but see *Alexandra Docks & Railway Co. v. Taff Vale Railway Co.* 28 T.L.R. 163, in which it was held that there might be a sum certain within the section although a set-off might be pleaded which might reduce the amount to which the plaintiff might ultimately be found to be entitled; see DEMAND; LIQUIDATED DEMAND). But an assessment under Lands Clauses Consolidation Act 1845 (8 & 9 Vict., c. 18), s.68, did not make the amount of it a "sum certain" within the section, so as to carry interest (*per* Collier County Court Judge, *Evans v. London & North Western Railway* 31 S.J. 333; see also *Re Peruvian Guano Co.* 63 L.J. Ch. 822). Nor did the phrase cover a sum which was liable to subsequent adjustment, for "sum certain" "must be a certain sum which is due absolutely and in all events

from the one party to the other, though it may not come, strictly speaking, within the term 'debt' " (*per* *Herschell C., London, Chatham & Dover Railway v. South Eastern Railway* [1893] A.C. 429).

(2) (a) A sum payable by a bill of exchange or promissory note was a "sum certain," within the Bills of Exchange Act 1882 (c. 61), "although it is required to be paid—

“(a) With interest.

“(b) By stated instalments.

“(c) By stated instalments, with a provision that upon default in payment of any instalment the whole shall become due.

“(d) According to an indicated rate of exchange, or according to a rate of exchange to be ascertained as directed by the bill” or note (ss.9, 89).

(b) A cheque for a specified number of francs was a bill of exchange for a "sum certain" or which could be made certain within s.9(1), Bills of Exchange Act 1882, and the rate at which the value of the francs had to be calculated was that prevailing on the day of the trial: see *Cohn v. Boulken* 36 T.L.T. 767; not followed in *Peyrae v. Wilkinson* [1924] 2 K.B. 166.

See CERTAIN TIME; DEFINITE.

SUM CLAIMED. (1) "Sum claimed" (Merchant Shipping Act 1850 (c. 104), s.460—see Merchant Shipping Act 1894 (c. 60), s.547) means "the sum asked before the proceedings commenced" (*per* Dr. Lushington, *The William and John* 32 L.J.P.M. & A. 103).

(2) "Sum in dispute" (Merchant Shipping Act 1850, s.464—see Merchant Shipping Act 1894, s.549) does not mean the sum awarded by justices, and appealed against, but means the sum originally in litigation (*The Andrew Wilson* 32 L.J.P.M. & A. 104). See also *The Generous* L.R. 2 A. & E. 57.

SUM EMPLOYED. "Sum employed as capital": see CAPITAL EMPLOYED.

SUM IN DISPUTE. See SUM CLAIMED.

SUM OF MONEY. See SUM.

SUM PAID. "Sum paid or payable on the death of the deceased . . . under any contract of assurance or insurance" (Fatal Accidents (Damages) Act 1908 (c. 7), s.1) did not include a contributory pension payable to a widow under the Widows', Orphans' and Old Age Contributory Pensions Act 1925 (c. 70): see *Carling v. Lebbon* 96 L.J.K.B. 515. See also Law Reform (Personal Injuries) Act 1948 (c. 41), s.2.

SUM PERIODICALLY. See PERIODICAL.

SUM PREVIOUSLY OFFERED. See PREVIOUSLY.

SUM RECOVERED. See RECOVER; SUM.

SUM USUALLY EXPENDED. "Sum usually expended" for "implements, utensils, or articles employed for the purposes of the trade" (Income Tax Act 1918 (c. 40),

r. 3(d) of Rules applicable to Cases I and II, Sched. D): see *Hyam v. Inland Revenue Commissioners* 1929 S.C. 384.

SUMMARILY. (1) Where any Act (coming into operation after December 31, 1879) prescribed that an offence was to be prosecuted, or a fine was to be recovered, “summarily, or on summary conviction,” or that money was to be recovered “before a court of summary jurisdiction,” or “summarily,” or “in a summary manner,” in either case the summary jurisdiction Acts applied (Summary Jurisdiction Act 1879 (c. 49), s.51) Cp. Magistrates’ Courts Act 1952 (c. 55), s.50.

(2) (a) In disputes as to salvage, under Merchant Shipping Act 1894 (c. 60), which are to be determined “summarily” (s.547), that means, in England, the county court; in Scotland, the sheriff’s court; in Ireland, the arbitration by two justices, or a stipendiary magistrate, or a recorder, or the chairman of quarter sessions (subs. (4)).

(b) Offences under Merchant Shipping Act 1894, punishable by imprisonment for not exceeding 6 months or by fine not exceeding £100, “shall be prosecuted summarily in manner provided by the Summary Jurisdiction Acts” (s.680(1)(b)), that did not deprive a culprit of the opinion to be tried by a jury given by Summary Jurisdiction Act 1879 (c. 49), s.17; see Magistrates’ Courts Act 1952 (sup.), s.25 (*R. v. Goldberg* [1904] 2 K.B. 866). See PROSECUTE.

(3) Costs of an appeal to quarter sessions (enforceable by a justice’s warrant of distress), were “recoverable summarily before a justice of the peace” within Debtors Act 1869 (c. 62), s.4(2) (*R. v. Pratt* L.R. 5 Q.B. 176).

(4) An offence “dealt with summarily” (Army Act 1881 (c. 58), s.46(1)(7)), was equally so “dealt with” whether the accused was acquitted or convicted (*Ex p. Brown* 37 S.J. 27). See also DEAL WITH.

(5) Civil matters may be disposed of “in a summary manner” under R.S.C., Ord. 59, r. 8 now Ord. 17, r. 5, though the subject-matter exceeds £50 in value (*Harbottle v. Roberts* [1905] 1 K.B. 572): see hereon *Bryant v. Reading* 17 Q.B.D. 128. The word “summarily” in r. 5(2) does not mean that the master can determine the matter forthwith but only that he can determine it without directing an issue (*Davis (P.J.B.) Manufacturing Co. v. Fahn, Fahn (Claimant)* [1967] 1 W.L.R. 1059).

SUMMARY CONVICTION. (1) A summary conviction is a conviction before a court of summary jurisdiction, or, in other words, one under the Summary Jurisdiction Acts: see Habitual Drunkards Act 1879 (c. 19), s.3; Betting and Loans (Infants) Act 1892 (c. 4), s.7.

(2) Where an offence was punishable by more than three months’ imprisonment on summary conviction the maximum penalty was not increased by the accused’s election to be tried by jury. Six months’ imprisonment “on summary conviction” (Magistrates’ Courts Act 1952 (c. 55), s.25 means on conviction in proceedings begun in a court of summary jurisdiction (*R. v. Bishop* [1959] 1 W.L.R. 931).

(3) “Summary conviction” (Powers of Criminal Courts Act 1973 (c. 62), s.21). Action taken by justices under s.12(1) of the Contempt of Court Act 1981 (c. 49) to commit to custody persons who wilfully interrupted the proceedings of the court did not amount to a summary conviction for the purposes of this section (*R. v. Newbury Justices, ex p. du Pont and Others* (1984) 78 Cr. App. R. 255).

SUMMARY JURISDICTION. See COURT OF SUMMARY JURISDICTION.

SUMMARY MANNER. See SUMMARILY.

SUMMARY OFFENCE. Stat. Def., Criminal Law Act 1977 (c. 45), s.64; Interpretation Act 1978 (c. 30), Sched. 1.

SUMMER TIME. See Summer Time Act 1925 (c. 64), s.1.

SUMMONED. See CONVENE.

SUMMONS. (1) A summons is the process by which a proceeding is commenced or by which (generally) a step therein is taken, *e.g.* a chamber summons, a county court summons, a magistrate's summons; see also ORIGINATING; WRIT OF SUMMONS. Cp. WARRANT.

(2) "Summons," by itself, will probably not include a writ of summons (*Towne v. Limerick S.S. Co.* 5 C.B.N.S. 730).

SUMS. See MONEY; MONEY DUE, SUM.

SUNDAY. (1) In the early days of Queen Elizabeth it was held that whether a day is a Sunday, or not, is triable "*per paies ou calend*" (Dyer, 182, pl. 55), but later on in the same reign it was ruled that the almanac was sufficient (*Page v. Faucet Cro. Eliz.* 227).

(2) "Sunday" (Sunday Closing (Wales) Act 1881 (c. 61), s.1) had only its ordinary meaning, and did not include Christmas Day (*Forsdike v. Colquhoun* 11 Q.B.D. 71).

(3) As to when Sunday is included or excluded in a computation of time: see DAYS, on which see *Ex p. Hicks* L.R. 20 Eq. 143; *Re Gilbert* 4 Ch. D. 794; HOLIDAY; see also DAILY. So, *semble*, a notice to quit may be served on a Sunday (*Sangster v. Noy* 16 L.T. 157), and rent may be paid on Sunday, and if due on Sunday and not then paid, it may be distrained for the next day (*Child v. Edwards* [1909] 2 K.B. 753). But the rule against service of a writ on Sunday is so strong that its invalidity cannot be waived (*Taylor v. Phillips* 3 East 155).

(4) (a) As to Sunday Observance Act 1977 (c. 7): see INSTITUTED; LABOURER; NECESSITY; ORDINARY CALLING, on which see *Bloxsome v. Williams* 3 B. & C. 232; OTHER; PROCESS; TRADE; WORKMAN.

(b) As to Sunday Observance Act 1780 (c. 49): see DISORDERLY; ENTERTAINMENT; KEEPER; MASTER; PROFANENESS. Cp. LAWFUL DAY.

(c) "Though Sunday Observance Prosecution Act 1871 (c. 87), s.1, prohibited a prosecution under the Sunday Observance Act 1677, except with the consent "in writing" of the chief officer of police, or two justices, or a stipendiary magistrate, yet that prohibition did not apply to a prosecution against a baker for selling bread on Sunday, contrary to s.16, 3 Geo. 4, c. cvi (an Act regulating the sale of bread in London) (*R. v. Mead* [1902] 2 K.B. 212).

(d) "Sunday Observance Acts 1625 to 1780." Stat. Def., Sunday Entertainments Act 1932 (c. 51), s.5.

(5) As to Sunday being originally a feast day and subsequently assuming the rigidity of the Hebrew Sabbath, see 185 Quarterly Review, 36.

"Traffic on Sunday": see TRAFFIC.

SUNDAY SCHOOL. In Sunday and Ragged Schools (Exemption from Rating) Act 1869 (c. 40), s.2, " 'Sunday school' shall mean any SCHOOL used for giving religious

education gratuitously to children and young persons on Sunday, and, on week-days, for the holding of classes and meetings in furtherance of the same object, and without pecuniary profit being derived therefrom." See *Rogers v. Lewisham Borough Council* [1951] 2 K.B. 768. Cp. RAGGED SCHOOL.

SUNK. See **SINK.**

SUNKEN WRECK. Part of the frame of a ship sunk beneath the surface of the sea and partially embedded in the ground, and also a quantity of iron ore that had formed part of the cargo of a ship, are "sunken wreck" within the collision clause of a marine insurance (*The Munroe* [1893] P. 248). See **WRECK.**

SUNRISE. See "Daytime," under **DAY.**

SUNSET. The court does not take judicial notice of the almanac for determining what was the hour of sunset on a particular day; that is a fact to be proved (*Collier v. Nokes* 2 C. & K. 1013). "Sunset," in the Regulations for Lighting-up Bicycles (Local Government Act 1888 (c. 41), s.85), meant sunset according to the particular locality; not according to Greenwich or Dublin Mean Time as provided by the statutory definition of "time" (*Gordon v. Cann* 68 L.J.Q.B. 434).

See also "Daytime," under **DAY.**

SUPERANNUATION. (1) (Police Superannuation Act 1848 (c. 14), ss.2, 3): see *Hobson v. Hull* 24 L.J.Q.B. 251.

SUPERANNUATION SCHEME. Stat. Def., Wages Councils Act 1979 (c. 12), s.28.

SUPERCARGO. A supercargo is a person employed to go with a cargo on voyage and oversee it and dispose of it to the best advantage (Jacob); and, "unless his authority be expressly or impliedly restrained, must, from the nature of his employment, be invested with a complete control over the cargo, and everything which immediately concerns it; that must embrace its destination" (*per Ellenborough C.J., Davidson v. Gwynne* 12 East, 396).

SUPERFICIAL YARD. As used in a building contract: see *Symonds v. Lloyd* 6 C.B.N.S. 691.

See **YARD.**

SUPERFLUOUS LAND. (1) "I think the cases of the *Great Western Railway v. May* (L.R. 7 H.L. 283), *Hooper v. Bourne* (5 App. Ca. 1), and *Betts v. Great Eastern Railway* (3 Ex. D. 182), have now settled, beyond all controversy, what the meaning of 'superfluous land' (in Lands Clauses Consolidation Act 1845 (c. 18), ss.127, 128) is. The test is whether or not there is bona fide reason to believe that within no very distant time—it may be years—but that within a reasonable time, having regard to the nature of the undertaking, it will be required for the purposes of the undertaking" (*per Mainstay J., Hobbs v. Midland Railway* 20 Ch. D. 418).

(2) "Slips of land above and below a tunnel are not superfluous lands" (*per Jessel M.R., Rosenberg v. Cook* 8 Q.B.D. 162, summarising *Re Metropolitan Railway and Cosh* 13 Ch. D. 607, which was applied in *Midland Railway v. Wright* [1901] 1 Ch. 738); nor land under arches which carry a railway (*Mulliner v. Midland Railway*

11 Ch. D. 611); nor mines under a surface required, or which may be required, for the undertaking (*Hooper v. Bourne* sup.). But the whole of the land beyond the boundary wall of a railway is “superfluous,” even though that wall be also a retaining wall thicker at the base than at the surface, and though part of such land would be within a line drawn on the surface vertically above the line of the footings of the wall (*Ware v. London, Brighton & South Coast Railway* 52 L.J. Ch. 198). See also *Tomlin v. Budd* 43 L.J. Ch. 627; *Glasgow Union Railway v. Caledonian Railway* L.R. 2 Sc. & D. App. 160.

(3) When a company sells, or offers to sell, lands as “superfluous,” that is conclusive as regards the rights of pre-emption of the adjoining owner (*London & South Western Railway v. Blackmore* L.R. 4 H.L. 610; but see thereon *Macfie v. Callender Railway* [1898] A.C. 270). But a mere sale to another company or to an individual (and *a fortiori* a mere negotiation, *Macfie v. Callender Railway* sup.) without giving the adjoining owner his chance of pre-emption—though *prima facie* evidence that the land is “superfluous” (and in any view such a sale is *ultra vires*)—does not conclusively show that the land is “superfluous” (*Hobbs v. Midland Railway* 20 Ch. D. 418; *Dunhill v. North Eastern Railway* [1896] 1 Ch. 121, where it was held that *Carington v. Wycombe Railway* 3 Ch. 377, is not inconsistent with *Hobbs v. Midland Railway*; see also *Beauchamp v. Great Western Railway* 37 L.J. Ch. 74; 38 *ibid.* 162). If, indeed, the sale be made under statutory compulsion, then it is no evidence at all that the land is “superfluous” (*Dunhill v. North Eastern Railway* sup.).

(4) But if the whole undertaking is abandoned, none of the land acquired for it can be “superfluous,” and the sections above cited are inapplicable (*Re Duffy* [1897] 1 I.R. 307): “the distinction between lands abandoned and lands superfluous is this—in the first case, the main line has never been constructed, or, if constructed, has been left derelict; in the second case, the line has been constructed, or lands on which are to be made the necessary works of the line have been taken up, and, along with these, other lands have been taken which are found not to be required for the purposes of the undertaking” (*per* Ross J., *Re Duffy* sup., citing in support *Smith v. Smith* L.R. 3 Ex. 282).

(5) As to land acquired *ultra vires*, see *Batson v. London School Board* 20 T.L.R. 22.

See ABSOLUTELY SELL.

SUPERINTEND. See MANAGE.

SUPERINTENDENCE. A “person who has superintendence entrusted to him” within Employers’ Liability Act 1880 (c. 42), s.8, “means a person whose sole, or principal, duty is that of superintendence, and who is not ordinarily engaged in manual labour”; a gangway man was not within the phrase as used in s.2(1) (*Shaffers v. General Steam Navigation Co.* 10 Q.B.D. 356). See hereon *Kellard v. Rooke* 21 Q.B.D. 367; *Tate v. Latham* [1897] 1 Q.B. 502. See also *Thompson v. Glass Bottle Co.* [1902] 1 K.B. 233; *M’Leod v. Pirie* 30 Sc. L.R. 425; *Falconer v. M’Cabe* 38 Sc. L.R. 112.

Cp. CONFORM.

“Board of Superintendence”: see BOARD.

SUPERIOR COURT. (1) It is submitted that “Superior Court” is to be construed historically and that, in its primary meaning, it connotes a court having an inherent jurisdiction, in England, to administer justice according to law, as and being a part

of, or descended from, and as exercising part of the power of, the *Aula Regia*, established by William the First, which had universal jurisdiction in all matters of right and wrong throughout the kingdom, and over which, in its early days, the King presided in person (3 Bl. Com. 37—60). An Inferior Court is one, limited as to its area and also limited, as to its jurisdiction and powers, to those matters and things which are expressly deputed to it by its document of foundation or by a legal custom (*London v. Cox* L.R. 2 H.L. 239, cited INFERIOR COURT, and the cases there cited by Willes J.).

(2) Before the Judicature Acts, the more principal Superior Courts were “the Lords House in Parliament, the Chancery, King’s Bench, Common Pleas, and Exchequer” (Bac. Ab. *Courts*, D, 1; see also 3 Bl. Com. 37—46). As there are degrees in the peerage yet each member is a peer, so of the Superior Courts. At one time, error lay from the C.P. to the K.B., but that did not “in the slightest degree interfere with the doctrine that the C.P. was a Superior Court” (*per* Erle C.J., *Ex p. Fernandez* 10 C.B.N.S. 28). So, diversity of jurisdiction in some matters cannot be material, for the above mentioned well-known Superior Courts had, in important matters, special and separate jurisdictions without affecting their status as Superior Courts. Neither does a limited area, of itself, prevent a court from being Superior; for the Palatine Courts are Superior Courts, “originally belonging, as they did, to the Lords Palatine to whom the Crown had granted their counties, to hold to them and their heirs ‘ita libere ad gladium sicut ipse Rex tenebat Angliam ad Coronam,’ and who possessed *jura regalia* there,” and (herefor citing Gilbert’s Hist. of C.P. 190) “were Superior Courts, within their jurisdiction, in as ample a manner as a Court of Westminster” (*per* Willes J., *Ex p. Fernandez* 30 L.J.C.P. 339).

(3) Reverting to and in confirmation of the submission in the first paragraph of this definition it is to be observed that the Court of Assize is a Superior Court (*Ex p. Fernandez* 30 L.J.C.P. 321), for “it is clear that the justices in eire (or eyre) were a court of equal degree with the *Aula Regia*. The *Aula Regia* was where the King was present; and the justices in eire were sent abroad into the different counties with all the powers and authorities of the *Aula Regia*, superseding all the local tribunals wherever they came. It is not at all necessary to maintain that judges of assize are of equal degree with the justices in eire; but all the books which treat of the subject agree that they possess and exercise many of the rights, privileges, and authorities of those whose functions they have superseded” (*per* Erle C.J. *ibid.*, 10 C.B.N.S. 29, 30).

(4) On the other hand, great antiquity and importance do not, *per se*, constitute a court a Superior Court, for the Lord Mayor’s Court of London is an Inferior Court (see INFERIOR).

(5) The Court of Admiralty was not one of the “Superior Courts of law or equity at Westminster,” within Common Law Procedure Act 1852 (c. 76), s.226 (*Milburn v. London & South Western Railway* L.R. 6 Ex. 4).

(6) “Superior Court” (County Courts Admiralty Jurisdiction Act 1868 (c. 71), s.9) meant “Superior Court having Admiralty jurisdiction,” which, *semble*, the Q.B.D. was not but the Cinque Ports Court was (*Rockett v. Chippingdale* 7 T.L.R. 449). See hereon *Hewitt v. Cory* L.R. 5 Q.B. 418.

(7) The County Court can be a “Superior Court” within the meaning of s.14(1) of the Contempt of Court Act 1981 (c. 49) (*Whitter v. Peters*; *Peart v. Stewart* [1982] 2 All E.R. 369).

Stat. Def., Contempt of Court Act 1981 (c. 49), s.19; Civil Jurisdiction and Judgments Act 1982 (c. 27), Sched. 6, para 5(2), Sched. 7, para. 5(2).

Cp. COURT; COURT OF RECORD; HIGH COURT; JUDGE; SUPREME COURT; INFERIOR COURT; JURISDICTION.

SUPERSEDE. (1) “A compulsory order ‘supersedes’ a voluntary winding-up (of a company) as from the date of the order; but that does not mean that it entirely puts an end to everything that has been previously done in the voluntary winding-up” (*per* Cotton L.J., *Thomas v. Lionite Co.* 17 Ch. D. 250). See WINDING UP.

SUPERSTITIOUS. Masses for the dead were contrary to the Dissolution of Colleges Act 1547 (c. 14), and a gift therefor, by a person domiciled in England, was void as being a superstitious use (*West v. Shuttleworth* 4 L.J. Ch. 115), even though the persons to receive the gift, and by whom the masses were to be performed, were resident where such a legacy was lawful (*Re Elliott* 39 W.R. 297). But gifts for masses for the dead were held to be charitable in *Re Caus* [1934] Ch. 162.

Cp. CHARITABLE USE. See MONASTIC.

SUPER-TAX. (1) “Super-tax is an additional income tax imposed on individual incomes exceeding a specific amount” (*per* Parker J., in *Bowles v. A.-G.* [1912] 1 Ch. 123, at p. 135). See also *Brooke v. Inland Revenue Commissioners* [1918] 1 K.B. 257; *Re Crosse* [1920] 1 Ch. 240, distinguishing *Re Crawshay* [1915] W.N. 412; *Crane v. Inland Revenue Commissioners* [1919] 2 K.B. 616.

(2) Treated as synonymous in a will, with sur-tax (*Re Hulton, Hulton v. Midland Bank Executor and Trustee Co.* [1931] 1 Ch. 77). See also SUR-TAX.

SUPERVISION. (1) “Supervision of a pharmacist” (Pharmacy and Poisons Act 1933 (c. 25), s.18, Poisons Act 1972 (c. 66) s.3(1)(a)(iii)) does not cover a case of a sale in a shop where the registered pharmacist is in the stockroom upstairs and only appears if and when he is asked for (*Roberts v. Littlewood’s Mail Order Stores* [1943] 1 K.B. 269); but as, in a self-service chemist’s shop, the sale was not completed until the cashier had accepted money, and there was a registered pharmacist with the cashier, the transaction took place under his “supervision” (*Pharmaceutical Society of Great Britain v. Boots Cash Chemists (Southern)* [1953] 1 Q.B. 401).

(2) The extent of the “immediate supervision” (Building (Safety, Health and Welfare) Regulations 1948 (No. 1145), reg. 6) required in erecting, etc., a scaffold varies in degree according to the nature of the scaffold and the difficulties and dangers involved. Thus, where a scaffold composed of planks on trestles is being moved, and those moving it are competent workmen, occasional inspections by the foreman are enough (*Maloney v. Cameron* [1961] 1 W.L.R. 1087).

(3) “Immediate supervision” (Building (Safety, Health and Welfare) Regulations 1948 (No. 1145) reg. 79(5)) means that the supervision cannot be delegated; the words do not necessarily mean that supervision must be constant and unremitting for the amount of supervision required will vary according to the nature of work (*Owen v. Evans & Owen (Builders)* [1962] 1 W.L.R. 933).

And See STOWAGE.

See WINDING-UP.

(4) “Supervision order.” Stat. Def., Criminal Justice Act 1948 (c. 58), s.74(1); s.72; Children and Young Persons Act 1969 (c. 54), s.11; Criminal Justice Act 1972 (c. 71), s.12; Guardianship Act 1973 (c. 29), s.3.

SUPPLEMENTAL. A deed expressed to be “supplemental” to a previous deed will, since the Conveyancing Act 1881 (c. 41), have effect as though it had been

endorsed on the previous deed or contained a full recital thereof (s.53). Cp. ANNEX; PRIMARY.

SUPPLEMENTARY BENEFIT. Stat. Def., Supplementary Benefits Act 1976 (c. 71), s.34; Social Security Act 1980 (c. 30), Sched. 2, para. 29(b).

SUPPLIED. (1) “Goods supplied,” as used in the consideration for a guarantee; held to mean, “goods to be supplied,” so that the guarantee was not for a past consideration (*Hoad v. Grace* 31 L.J. Ex. 98). See also GIVEN.

(2) “Factory where mechanical power is supplied,” as used in definition of “tenement factory”: see *Re Brass and London County Council* [1904] 2 K.B. 336, cited FACTORY; *Mumby v. Volp* [1930] 1 K.B. 460.

(3) Soda water bottles supplied by a manufacturer for sale in a shop and returnable when empty were held to be “supplied” under a contract of sale within the meaning of Sale of Goods Act 1893 (c. 71), s.14, and therefore to be subject to the implied warranty of fitness within the meaning of the section; see *Gedding v. Marsh* [1920] 1 K.B. 668.

(4) “Persons supplied with water,” within a waterworks company’s Act, includes an owner whose house is tenanted if such owner be liable to pay the water rate (*Brock v. Harrison* [1899] 1 Q.B. 958).

See WELL SUPPLIED; SUPPLY.

SUPPLIER. Stat. Def., Finance Act 1966 (c. 18), s.15(6); Consumer Credit Act 1974 (c. 39), s.189, Resale Prices Act 1976 (c. 53), s.24.

SUPPLIES. The provision of housing accommodation was within the ambit of “supplies and services” in reg. 51(1) of the Defence (General) Regulations 1939 (*Blackpool Corporation v. Locker* [1948] 1 K.B. 349).

SUPPLY. (1) (a) To “supply” anything—e.g. water—means passing it from one who has it to those who want it; you may “provide” a thing for yourself, but that is not “supplying it” (*West Surrey Water Co. v. Chertsey* [1894] 3 Ch. 513).

(b) But a local authority “supply water within their district” (Public Health Act 1875 (c. 55), s.54) when they have taken upon themselves the burden of carrying out the water supply sections of the Act, although the delivery of the water has not actually begun nor are their works completed (*Jones v. Conway etc. Water Board* [1893] 2 Ch. 603). Cp. Public Health Act 1936 (c. 49), s.119.

(c) “The case of *East London Waterworks Co. v. St. Matthew, Bethnal Green* 17 Q.B.D. 475, cited PARTY, shows what, in such an Act as this—a waterworks company’s Act—is the meaning of the words ‘works necessary for supplying water’; and that they include works necessary for preventing waste of water” (per Esher M.R., *Chapman v. Fylde Waterworks Co.* [1894] 2 Q.B. 599, applied in *Batt v. Metropolitan Water Board* 80 L.J.K.B. 521; see also *Metropolitan Water Board v. Johnson* [1913] 3 K.B. 900); “the expression ‘supplying water’ includes the power of regulating the supply” (per Esher M.R., *East London Waterworks Co. v. St. Matthew* sup.), by, e.g. stop-valves and guard boxes. See also *Grand Junction Waterworks Co. v. Rodocanachi* [1904] 2 K.B. 238, cited WASTE. See WATER WORKS. “Source of water supply”: see SOURCE.

(d) Supply of water with sanction of Local Government Board (Public Health Act 1875 (c. 55), s.61): see *Soothill v. Wakefield* [1905] 2 Ch. 516, *Tynemouth v. Newbiggin* 80 J.P. 195. Cp. Public Health Act 1936 (c. 49), s.114. As to the supply

ing of water under s.126 of the Public Health Act 1936 (sup.), see *Border Rural District Council v. Roberts* [1950] 1 K.B. 716.

(e) The “supply of water” outside a company’s statutory limits is not incident to its powers to supply within those limits; and the point of supply is where the water is made available for consumption: see *A.-G. v. West Gloucestershire Water Co.* [1909] 2 Ch. 338; cp. *Gaslight & Coke Co. v. South Metropolitan Gas Co.* 62 L.J. Ch. 123.

(f) “Undertakers who supply water” (Water Act 1945 (c. 42), Sched. 3, para. 46) includes permitting a householder to connect his house to the main (*South Devon Water Board v. Gibson* [1955] 2 Q.B. 448).

(2) The point of “supply” of gas (Metropolis Gas Act 1860 c. 125), s.6) is the meter from which the gas passes into the customer’s pipes (*Gaslight & Coke Co. v. South Metropolitan Gas Co.* 58 L.T. 899; *Imperial Gaslight Co. v. West London Gas Co.* 56 L.J. Ch. 862, n. See those cases, and also *Gaslight & Coke Co. v. South Metropolitan Gas Co.* 62 L.J. Ch. 123, as to “supply gas for sale” in same section).

(3) (a) The “supply of electricity” which under the first part of Electric Lighting Act 1882 (c. 56), s.11, a local authority might contract for without the consent of the Board of Trade, “only means that the local authority, who are the undertakers, may buy the current in bulk, or in some other way,” and not that such authority can (without the consent) “transfer” its power of distributing such electricity to the consumers (*per Warrington J.*, *Sudbury v. Empire Electric Light Co.* [1905] 2 Ch. 110). See also TRANSFER.

(b) As to the meaning of “supply” in Electric Lighting Acts 1882 to 1919, see *A.-G. v. County of London Electric Supply Co. Ltd.* [1926] 1 Ch. 542; see also *A.-G. v. Corporation of Leicester* [1910] 2 Ch. 359; *A.-G. v. Southport Corporation* [1923] 1 Ch. 548; affirmed [1924] A.C. 909.

(c) As to the right to demand “supply” of electric energy, under Electric Lighting Act 1882 (c. 56), s.19, see *Husey v. London Electric Supply Corporation* [1902] 1 Ch. 411, cited ENERGY; as to a “corresponding supply,” see *Metropolitan Electric Supply Co. v. Ginder* [1901] 2 Ch. 799, cited UNDUE PREFERENCE.

(d) A power to a municipal authority to supply electric energy to customers does not authorise it to sell or hire out apparatus for the use of the energy; the “supply” is completed at the customer’s terminals; the installation of electricity and the provision of fittings is a separate business incidental to the use but not to the supply of energy: see *A.-G. v. Leicester Corporation* sup. See also *London County Council v. A.-G.* [1902] A.C. 165, cited TRAMWAY; *A.-G. v. Manchester* [1906] 1 Ch. 643, cited CONVEY; *Morris v. Loughborough* [1908] 1 K.B. 205.

(e) For the purposes of the Electricity (Supply) Acts 1882–1928, means supply at the consumer’s terminals (*A.-G. v. Gravesend Corporation* [1936] Ch. 550).

(4) A person was not guilty of supplying intoxicating liquor in contravention of an Order of the Central Control Board (Liquor Traffic) if the liquor was seized by a constable before it reached the hand of the person for whom it was intended; see *Bailey v. Saunders* 86 L.J.K.B. 1066. If liquor is sold and appropriated to a purchaser during lawful hours, but handed over during unlawful hours an offence is committed: see *Hall-Dalwood v. Emerson* 87 L.J.K.B. 296. If liquor is sold to a purchaser in licensed premises and taken to a private room and there consumed the offence is committed: see *Ellis v. Adames* 90 L.J.K.B. 119.

(5) “Supply,” in Trading With the Enemy Proclamation, 1914: see *Salti et Fils v. Procurator-General* [1919] A.C. 968.

(6) “Supply” of goods for export (Knitted Goods (Manufacture and Supply) Order, 1948 (No. 316), art. 3(2)): see *Patel v. Willis* [1951] 2 K.B. 78.

(7) "Supplying" a ship with fuel oil is not "equipping" it within s.22(1) (a) (x) of the Judicature Act 1925 (c. 49) (*Secony Bunker Oil Co. v. Owners of S.S. D'Vora* [1953] 1 W.L.R. 34).

(8) "Supply" (Dangerous Drugs (No. 2) Regulations 1964 (No. 1811), reg. 8). A person who injects another with that other person's own heroin does not "supply" it within the meaning of this regulation (*R. v. Harris (Janet)* [1968] 1 W.L.R. 769).

(9) "Supply" (Misuse of Drugs Act 1971 (c. 38), s.5(3)). A man who went shopping for drugs for himself and others was "supplying" them contrary to this section, in spite of the fact that the purchases were made on behalf of a co-operative enterprise formed to purchase drugs for their own use (*Holmes v. Chief Constable, Merseyside Police* [1976] Crim. L.R. 125. And a person was held to be guilty of "supplying" a drug when, after collecting it on behalf of himself and a partner, he hands over the partner's share (*R. v. Buckley* (1979) 69 Cr. App. R. 371). A person who told the police that cannabis found in his car belonged to another person, and that it was to be handed back to that person on demand, was held not to be guilty of an intent to supply within the meaning of this section (*R. v. Greenfield* [1983] Crim. L.R. 397). But this case had to be "explained" in *R. v. Delgado* [1984] 1 W.L.R. 89 where it was held that "supply" means the transfer of physical control from one person to another. Questions as to ownership or legal possession are irrelevant so that the act of delivery of a drug to its owner was held to be a "supply".

(10) A person "supplies" goods for the purposes of the Trade Descriptions Act 1968 (c. 29) s.1(1) upon delivery by the seller or, if they are to be collected by the buyer, upon notification that they are ready for delivery, and not, if that is different, at the time of the agreement to buy (*Rees v. Munday* [1974] 1 W.L.R. 1284). "Supplied" (s.1(1)(b)) comprehends more than an act of delivery, and the actual moment when goods are handed over is not the only relevant time to be considered when deciding whether they have been "supplied" with a false description (*R. v. Hammertons Cars* [1976] 1 W.L.R. 1243). Supply in effect means distribution, and it is not necessary to establish a sale of goods for a "supply" to be made under s.1(1). Thus the offering of pre-recorded video cassettes for hire to members of the public was held to be an offer to supply goods (*Cahalne v. Croydon London Borough Council* (1985) 4 Trl. 199).

(11) "Supplied" (Road Traffic Act 1972 (c. 20), s.10(5)(b) as amended). Where, as a result of a motorist saying he did not want a specimen of his blood, the specimen was placed with his possessions, it was held to have been "supplied" within the meaning of this section (*R v. Jones (Colin)* [1974] R.T.R. 117).

(12) "Supply of goods or services" (Finance Act 1972 (c. 41), ss.1-10; now Value Added Tax Act 1983 (c. 55), ss.1, 2). The serving of drinks at a bar, on payment of a charge, to members of a non-profit making club was held to be a "supply of goods or services" within the meaning of this section (*Carlton Lodge Club v. Customs and Excise Commissioners* [1975] 1 W.L.R. 66). The conferment of membership of an association on payment of a subscription was a "supply of services" in that it grants a right and thus comes within the definition contained in this section (*Commissioners of Customs and Excise v. The Automobile Association* [1974] 1 W.L.R. 1447). See also CONSIDERATION; TAXABLE SUPPLY. Where a company which provided accommodation, training, feedstuffs and labour for racehorses acquired the feedstuffs and labour from a farmer who owned some of the horses, and the company's accounts apportioned the feedstuffs and labour between the farmer's horses and those owned by others, then, even though the food and labour used on the farmer's horses was in no physical way separated from that used on the others, the company did not "supply" feedstuffs and labour to the farmer, but only accommo-

dation and training for the purposes of value added tax (*Spigot Lodge v. Customs and Excise Commissioners*, *The Times*, February 26, 1985).

(13) "Are supplied" (Finance Act 1972 (c. 41), s.7(8); see now Value Added Tax Act 1983 (c. 55), s.5). These words are to be construed as referring to a continuing and subsisting state of affairs, and not, as in the case of rented television sets, to the single act of delivery at the beginning of the period of hire (*Customs and Excise Commissioners v. Thorn Electrical Industries* [1975] 1 W.L.R. 1661).

Stat. Def., Restrictive Trade Practices Act 1956 (c. 68), s.36(1); Fair Trading Act 1973 (c. 41), s.137(2); Health and Safety at Work Act 1974 (c. 37), s.53; Restrictive Trade Practices Act 1976 (c. 34), s.43; Resale Prices Act 1976 (c. 53), s.8; Finance Act 1977 (c. 36), Sched. 6, para. 6; Consumer Safety Act 1978 (c. 38), s.9; Value Added Tax Act 1983 (c. 55), s.3; Video Recordings Act 1984 (c. 39), s.1.

"Supplied to the premises," see PREMISES.

"Supplied . . . in the course of a business carried on by him." See BUSINESS.

See AREA; CONTRACT TO SUPPLY; GENERAL SUPPLY.

SUPPORT. (1) A bequest "to support" an institution does not offend the law of mortmain (*Re Hedgman, Morley v. Croxon* 8 Ch. D. 156; Tudor Char. (5th ed.) 467, 468). See FOUND; MAINTENANCE.

(2) "Support" (Scientific Societies Act 1843 (c. 36), s.1) of a society such as the Royal College of Music includes all benefactions which enrich it or further its objects or powers, or relieve it of a burden, or enable it to perform its purposes in a more dignified manner; thus, gifts in kind, and scholarships or prizes not earmarked to pay the holder's college fees constitute support within the meaning of the Act (*Cane v. Royal College of Music* [1961] 2 Q.B. 89).

(3) An agreement between a borough and the county in which it is situate whereby the borough pays the county so much a head for the "support and maintenance" of the prisoners from the borough, includes within that phrase the expense of keeping up the county prison, as well as the prisoners' houseroom, food, clothing, bedding, and fuel; but not the expenses of conveying prisoners, or of their prosecution, or of keeping up county lock-up houses (*R. v. Gravesend* 5 E. & B. 549). Cp. *R. v. Birmingham* 10 Q.B. 116, cited PROSECUTION.

(4) "Support," in Public Health Act 1875 (Support of Sewers) Amendment Act 1883 (c. 37), s.2, "includes vertical and lateral support."

(5) As to right of support from neighbouring soil and houses: see Gale (11th ed.), Pt. 3, ch. 6; *Popplewell v. Hodgkinson* L.R. 4 Ex. 248; *Jordeson v. Sutton Gas Co.* [1899] 2 Ch. 217; *New Moss Colliery Co. v. Manchester, Sheffield & Lincolnshire Railway* [1897] 1 Ch. 725; *Hamilton v. Graham* L.R. 2 Sc. & D. App. 166.

(6) The right, or duty, under the Housing Act 1936 (c. 51), s.26, to demolish a building affected by a clearance order could not be exercised so as to prejudice a right of support enjoyed by an adjacent building (*Bond v. Nottingham Corporation* [1940] Ch. 429).

(7) A plea of enjoyment of a right of support claim, on the ground that the supported buildings were not visible from the supporting buildings or any public place in the vicinity, was held untenable in *Lloyds Bank Ltd. v. Dalton* [1942] Ch. 466.

(8) *Semble*, a contractual provision authorising owners of minerals to withdraw support from the surface does not create an easement, but merely gives immunity from the liability to pay damages for or to be enjoined against such withdrawal (*Elliott v. Burn* [1935] A.C. 93). But it does create a "right, privilege or benefit in, over or derived from land" within the Finance Act 1934 (c. 32), s.21 (*Inland*

Revenue Commissioners v. New Sharlston Collieries Co. Ltd. [1937] 1 K.B. 583; *Earl Fitzwilliam's Collieries Co. v. Phillips* [1942] 2 K.B. 42).

(9) "Maintain, uphold, support and keep in repair": see *London v. Great Western Railway* [1910] 2 Ch. 314, cited MAINTAIN.

"Loss of support," see LOSS.

"Maintenance and support" of wife: see MAINTENANCE.

SUPPOSED. (1) "'The supposed cause of action' (in a pleading), means the ALLEGED cause" (*per* Alderson B., *Eavestaff v. Russell* 10 M. & W. 366; *ibid.* 12 L.J. Ex. 176; see also *Scadding v. Eyles* 9 Q.B. 860, 862).

(2) "Supposed to be," when prefacing a quantity: see *Davis v. Shepherd* 1 Ch. 410.

(3) "Supposed" and "suspected" are similar in that they both fall short of knowledge (*Thompson v. Gibbens* [1948] T.S.R. 107).

See ENTITLED TO VOTE.

SUPPOSITION. See FAIR AND REASONABLE.

SUPPRESS. (1) To "suppress" anything is to put a stop to it when actually existing, and does not extend to preventing it by suppressing what may lead to it (*Chelsea v. King* 17 C.B.N.S. 625).

(2) "Fraud, or suppression, or concealment" of a material fact, on which to revoke an order of release under Bankruptcy Act 1883 (c. 52), s.82(3) (see Bankruptcy Act 1914 (c. 59), s.93(3)), must be such suppression or concealment as has in it some element of fraud (*per* Wright J., *Re Harris* [1899] 2 Q.B. 97).

Suppression of material facts in a divorce suit: see MATERIAL FACT.

See SILENCE.

SUPRA PROTEST. Acceptance, or payment, of bill "for honour *supra* protest" see HONOUR; Chalmers (12th ed.) 213 *et seq.*; Byles (20th ed.) 206.

SUPREME COURT. (1) "The Supreme Court of this kingdom is the High Court of Parliament, consisting of king, lords, and commons, who are invested with a kind of omnipotency in making new laws, repealing and reviving old ones; and it is on the right balance of these three depends the well-being, and indeed the very being, of our constitution" (Bac. Ab. *Courts*, D, 1). See PARLIAMENT.

Stat. Def., Interpretation Act 1978 (c. 30), Sched. 1.

Cp. COURT; HIGH COURT; JUDGE; SUPERIOR COURT.

SURCHARGE. (1) To "surcharge" a common is "putting more cattle therein than the pasture and herbage will sustain, or the party hath a right to do" (3 Bl. Com. 237). See STINT.

(2) "Surcharge and falsify" a settled account: see Dan. Ch. Pr. (8th ed.) 420. See also *R. v. Carson Roberts* [1908] 1 K.B. 407.

(3) The power of a district auditor of a county council to surcharge the amount of a loss or deficiency upon any person guilty of negligence or misconduct under s.228(1)(d) of the Local Government Act 1933 (c. 51), does not cover the power to surcharge a person who is not a member of the council (*Re Dickson* [1948] 2 K.B. 95).

SURETY. (1) Misconduct of a servant condoned by the master discharges one who is surety for the servant: see *Phillips v. Foxhall* L.R. 7 Q.B. 666; *Federal Supply, etc. Co. v. Angehrn* 80 L.J.P.C. 8, cited **CONDONATION**.

(2) "Two sufficient sureties" (Customs Consolidation Act 1876 (c. 36), s.247): see *Re Attfield* 93 L.J.K.B. 1064.

(3) "Surety or guarantor" (Bankruptcy Act 1914 (c. 59), s.44) includes a person who gives security without incurring personal liability (*Re Conley* 107 L.J. Ch. 257).

Stat. Def., Consumer Credit Act 1974 (c. 39), s.189.

See **GUARANTEE**.

SURETY OF THE PEACE. Is an acknowledgment of a bond to the Crown, taken by a competent judge or magistrate, as a surety that the peace shall be kept by a particular person or persons: see hereon Jacob, 4 Bl. Com., ch. 18; Stone, *Surety of the Peace*. See also *Wise v. Dunning* [1902] 1 K.B. 167. For an early example, see Acts, xvii, 9.

See **ENTER**; **GOOD BEHAVIOUR**; **PEACE**; **RECOGNISANCE**.

SURF. "A 'surf' day in a charterparty is a day on which the surf on the beach is so heavy that lighters cannot land their cargo there" (*per* Walton J., in *Bennett v. Brown* [1908] 1 K.B. 490, cited **WEATHER WORKING DAY**, which see hereon). See also *British & Mexican Shipping Co. v. Lockett* [1911] 1 K.B. 264, cited **WORKING DAYS**; *Holman v. Peruvian Nitrate Co.* 5 Rettie 657.

SURFACE. (1) "'Surface,' or superficies, *prima facie* means, of course, nothing more than the mere *vestimenta terræ*" (MacS. 19); "the top of the earth and whatsoever is upon the face thereof" (Cowel, *Superficies*). See hereon *Wakefield v. Buccleuch* L.R. 4 Eq. 613, cited **SOIL**; but see *London & North Western Railway v. Evans* [1893] 1 Ch. 16, cited **SATISFACTION**; **SUPPORT**. Cp. **VEST**.

(2) (a) For the canons of construction of Inclosure Acts, where surface and minerals are severed, see *Bell v. Dudley* [1895] 1 Ch. 182. See also *Consett Waterworks Co. v. Ritson* 22 Q.B.D. 318, 702; but see *New Sharlston Collieries v. Westmoreland* [1904] 2 Ch. 447, n.; *Bishop Auckland Co-operative Society v. Butterknowle Colliery Co.* in House of Lords nom. *Butterknowle Colliery Co. v. Bishop Auckland Co-operative Society* [1904] 2 Ch. 419; [1906] A.C. 305; *Welldon v. Butterley Co.* [1920] 1 Ch. 130.

(b) In that case, Farwell J., said, "I have great doubt whether *Consett Waterworks Co. v. Ritson*, or *Bell v. Dudley* sup., can stand with the subsequent decision of the House of Lords in *New Sharlston Collieries v. Westmoreland*," and Lord Macnaghten said, "In my opinion, *Consett Waterworks Co. v. Ritson* can no longer be regarded as an authority." *Butterknowle Colliery Co. v. Bishop Auckland Co-operative Society* was distinguished in *Butterley Co. v. New Hucknall Colliery Co.* [1910] A.C. 381.

(c) In *Consett Industrial & Provident Society Ltd. v. Consett Iron Co. Ltd.* [1922] 2 Ch. 135, *Consett, etc. v. Ritson* was followed on the ground that although the reasoning upon which that decision was founded had been disapproved by the House of Lords in *Butterknowle, etc. v. Bishop Auckland, etc.* sup., the decision itself had not been overruled and was therefore binding upon the court. But see *Welldon v. Butterley Co.* sup.

(3) (a) The fundamental principle, applicable not only to Inclosure Acts but to all cases in which there is a severance of the surface from the subjacent minerals, is

that enunciated by Lord Blackburn in *Davis v. Treharne* (50 L.J.Q.B. 667; 6 App. Ca. 466) and cited by Selborne C., in *Love v. Bell* (53 L.J.Q.B. 258; 9 App. Ca. 288): "I think it must be taken as perfectly settled ground that, as of common right, the surface land has a right to be supported by subjacent strata of minerals. Although that is common right, it may be shown—the burden lying upon those who wish to show it—that the person who has got the surface obtained it either upon terms which would give him no right to support (he having accepted it and taken it upon those terms), or that, before he got it, the person from whom he claims (the owner of the surface) had parted with the right of support from below, in which case, of course, the owner of the surface could be in no better position than the person who sold it to him. In common right, the person who owns the surface has a right to have it properly supported below by minerals, and if there are mineral workings under the surface, to have a proper support left for it by pillars," and "whoever claims against that has the burden of proof thrown upon him" (*per Selborne C., Love v. Bell*); see also *Dixon v. White* 8 App. Cas. 833; 20 Sc. L.R. 541; see also *Davies v. Powell Duffryn Steam Coal Co. Ltd.* 91 L.J. Ch. 40.

(b) That proof will not be supplied "by showing that there are words, however, large, applicable to the right of working, and privileges connected with it, and compensation to be paid for working and for the use of those privileges" (*per Selborne C., Love v. Bell* 53 L.J.Q.B. 258; 9 App. Ca. 289). Though much, and sometimes decisive, reliance has been placed on a compensation clause as giving the mineral-owner a right (on paying the compensation) to let down the surface (*Consett Waterworks Co. v. Ritson* sup.; see also *per Farwell J., and Romer L.J., Bishop Auckland Co-operative Society v. Butterknowle Colliery Co.* sup.; *Anderson v. M'Cracken* 37 Sc. L.R. 587, cited PROFITABLE), yet, generally, such a provision seldom justifies a mineral-owner in letting down the surface, and the true view is, probably, that stated by Lord Davey in *New Sharlston Collieries v. Westmoreland* sup.: "It does not seem to me to give a license to do the injury, if you say that a person shall pay compensation if he does it. A covenant (and, it is submitted, *a fortiori*, a command) to pay compensation for doing a thing which you are prohibited from doing, is in no way contrary to, or inconsistent with, the continuance of the obligation not to do it." But side by side with that should be considered the following statement by Loreburn C., in *Butterknowle Colliery Co. v. Bishop Auckland Co-operative Society*: "Where power is given to get the minerals on paying compensation for damage done to the surface, the court will still scrutinise the compensation clause. Are there any rights belonging to the mine-owner on the surface (such as a right of making roads) to which the compensation clause may refer? If the compensation clause is capable of being satisfied by reference to acts done on the surface, then, though it may be wide enough to cover also damage done to the surface by taking away the support, still it must be confined to damage done on the surface, and the inference that support may be taken away on payment of compensation will not be drawn. Again, courts have asked whether the compensation is manifestly inadequate for such an injury as letting down the surface, and have commented upon the absence of any provisions for compensation. Either of these circumstances has supplied judges with a reason for so cutting down wide language, in a grant of minerals, as to imply a condition that the surface shall be supported."

(4) As to the right of the owner of a lower stratum of coal to work it even though such working cause subsidence to a superjacent stratum, on paying compensation to the owner of the latter, see *Butterley Co. v. New Hucknall Colliery Co.* sup.; *Welldon v. Butterley Co.* [1920] 1 Ch. 130.

(5) As to the construction of clauses for compensation where subjacent minerals

are taken under compulsory powers, see *Birch v. Joy* 3 H.L. Ca. 565, and other cases, cited POSSESSION, para. (11). Where surface is sold under Special Act, which Act is replaced by a subsequent Act: see *London & North Western Railway v. Walker* [1903] A.C. 289, overruling *R. v. London & North Western Railway* [1899] 1 Q.B. 921.

(6) Surface, as distinguished from the subjacent soil, e.g. the surface over a railway tunnel, is land of which exclusive possession may be had, and a title to which may be acquired by prescription, under the Real Property Limitation Acts, subject to the rights of the owners of the subjacent soil (*Midland Railway v. Wright* [1901] 1 Ch. 738).

(7) Prima facie, surface includes the subjacent minerals (*Seddon v. Smith* 36 L.T. 168).

(8) The right of support of surface by the subjacent minerals is an "easement, right, or privilege," within Settled Land Act 1925 (c. 18), s.41, and if required in a lease of the minerals that would be for "mining purposes" within the definition in s.117(1)(xv); and the tenant for life of the settled surface (being also owner in fee of the subjacent minerals of which he is granting a lease) may, under s.6, grant the lease with the right to work the mines so as to let down the surface (*Re Sitwell* [1905] 1 Ch. 460).

(9) "Surfaces," in a patent specification: see *Barber v. Grace* 1 Ex. 338.

Stat. Def., Coast Protection Act 1949 (12, 13 & 14 Geo. 6, c. 74), s.49(1); Mines (Working Facilities and Support) Act 1966 (c. 4), s.14.

See also AS FULLY; BREAK; FULL COMPENSATION; GRANT; PROFITABLE; SUBSIDENCE; SURFACE DAMAGE; USUAL AND MOST APPROVED WAY; SUPPORT.

SURFACE DAMAGE. (1) "The expression 'surface damage' is a term well known in the North of England in the colliery districts. It is damage to the crops by using the surface, or by the smoke coming from the colliery works or pit-heaps, in respect of which compensation is payable under leases or reservations of coal, or where lords work coal by custom under copyhold lands. It is difficult to say that the injury to the foundations of a house extending to the walls and roof of the house, or the subsidence of the soil partially or wholly destroying the future fertility of the soil, is a surface damage; it may be damage to the house and land, but not surface damage" (*Allaway v. Wagstaff* 29 L.J. Ex. 58; see also *Neill's Trustees v. Dixon* 7 Sess. Ca. (4th Series) 741).

(2) Where, however, power is reserved, or given, to let down the SURFACE upon payment of "surface damage," then "it is quite clear on the authorities that it depends on the construction of each particular contract whether the expression 'surface damages' includes damages arising from subsidence of the ground occasioned by underground mineral workings, or is limited to damages arising from operations on the surface" (per Lord Adam, *Hallpenny v. Dewar* 35 Sc. L.R. 696); in that case (following *Stewart's Hospital v. Waddell* 27 Sc. L.R. 815) it was held that "surface damage" included damage from subsidence.

See DAMAGE.

SURGEON. (1) "In strictness, to act as a surgeon something must be done by the hand" (per Knight-Bruce L.J., *Ex p. Crabb, Re Palmer* 25 L.J. Bank. 49).

(2) "A surgeon, formerly, was a mere operator, who joined his practice to that of a barber. In latter times all that has been changed, and the profession has risen into great and deserved eminence. But the business of a surgeon is, properly speaking, with external ailments and injuries of the limbs" (per Best C.J., *Allison v. Haydon*

4 Bing. 621). But “with a view to the recovery of a patient in a case of that description, he may perhaps prescribe and dispense medicine” (*ibid.*, see also *per* Cresswell J., *Apothecaries Co. v. Lotinga* 2 Moo. & R. 499). See **APOTHECARY**.

(3) Surgeons were formerly a sad lot: see 34 & 35 Hen. 8, c. 8. But see **INFERIOR TRADESMAN**.

(4) The company of Surgeons and Barbers was constituted and regulated by an Act concerning Barbers and Surgeons of 1540 (c. 42), which union was dissolved by an Act of 1745 (c. 15), which statute incorporated, and contained regulations as to, the surgeons of London. The Royal College of Surgeons of England was incorporated by Charter, September 14, 1843, the subsequent Charters being March 18, 1852, September 8, 1859 and July 20, 1888.

(5) “Manipulative surgeon.” The use of the title “manipulative surgeon” was an infringement of the Medical Act 1858 (c. 90) (*Jutson v. Barrow* [1936] 1 K.B. 236).

As to falsely pretending to be a surgeon: see **PHYSICIAN**.

Practising as a surgeon: see **PRACTISE**; **CARRY ON**.

“Dental surgeon”: see **DENTAL**; **DENTIST**.

See “medical practitioner,” under **MEDICAL**.

See also **APOTHECARY**.

SURGERY. See **PHYSIC**.

SURGICAL. “Medical, surgical, . . . requirements,” see **MEDICAL**.

SURNAME. (1) It seems that a bequest to a class of the “surname” of a particular person is more readily construed as indicating the “family” or “stock” of that person than if the word “name” were used (3 Jarm. (8th ed.) 1602, 1645, citing *Carpenter v. Bott* 16 L.J. Ch. 433).

(2) See name and arms clause, under **NAME**. See also *Re Drax* 75 L.J. Ch. 317, cited **WRITING**.

(3) A candidate’s surname, *e.g.* in a nomination for town councillor, may be sufficiently stated though inaccurately spelt, *e.g.* Millar for Miller (*Miller v. Everton* 64 L.J.Q.B. 692).

Stat. Def., Registration of Business Names Act 1916 (c. 58), s.22; Companies Act 1981 (c. 62), s.34.

See also **CHRISTIAN NAME**.

SURPLICE FEES. “Those fees and dues which go by the name of ‘surplice fees,’ being fees on interments, burials, marriages, and the like. With respect to surplice fees it is said that none are due to the minister as of common right, but depend on social custom only” (2 Steph. Bl. 743; cited and adopted by Kay J., *Stewart v. West Derby Burial Board* 34 Ch. D. 339).

SURPLUS. (1) “It is to the particular language and to the circumstances of each will that we must look in order to see whether the word ‘surplus’ or ‘residue’ is to be taken as indicating surplus or residue properly so called, or merely as indicating” a share of a particular fund (*per* Cranworth C., *Southmolton v. A.-G.* 5 H.L. Ca. 26).

(2) “Surplus” will not always be construed as “overplus,” in the wide sense of whatever shall turn out to be the overplus (*Page v. Leapingwell* 18 Ves. 466). Cp. **OVERPLUS**; **REMAINDER**.

(3) “Surplus” widens the meaning of “rents, issues, and profits,” in a residuary

devise, e.g. of “residuary or surplus rents, issues, and profits” (*Cust v. Middleton* 34 L.J. Ch. 185; see also *per Hardwicke C.*, *Sherrard v. Harborough Amb.* 164).

(4) (a) “Surplus assets,” in the winding-up of a company, has no fixed legal meaning. The phrase may mean the assets remaining (1) after payment of the company’s liabilities and the costs of winding-up, or (2) after those payments and recoupment of capital (*Re New Transvaal Co.* [1896] 2 Ch. 751, where the latter meaning was adopted, and the same was followed in *Re Peabody Co.* 104 L.T. 128; see *Re Ramel Syndicate* [1911] 1 Ch. 749). See also *Re Anglo-Continental Corporation* [1898] 1 Ch. 327, cited WINDING-UP; *Re Crichton’s Oil Co.* [1902] 2 Ch. 86; *Re Wharfedale Brewery Co.* [1952] Ch. 913. See DISTRIBUTED.

(b) “Surplus assets,” in the memorandum of association of a company, was held to mean what was left after the payment of debts and the repayment of the whole of the preference and ordinary capital (*Re Dunstable Portland Cement Co.* 48 T.L.R. 223).

(c) “Surplus assets.” In the memorandum and articles of a company, “surplus assets” means all the assets of the company remaining after creditors have been paid and the costs of winding up have been paid or provided for, but before any payment to members as such has been made or provided for. “Any further surplus assets” means that part of the “surplus assets” remaining after paying or providing for the members (*Dimbula Valley (Ceylon) Tea Co. v. Laurie* [1961] 1 Ch. 353).

(5) For a comparison of “balance” and “surplus” see *Re Herbert* [1946] 1 All E.R. 421.

(6) “Surplus money”: held, contextually, to pass South Sea Stock and 3¼ Per Cents (*Newman v. Newman* 26 Bea. 218). See also MONEY.

“Surplus capital”: see Savings Bank Act 1929 (c. 27), s.8.

“Surplus land”: see SUPERFLUOUS LAND.

SURPLUSAGE. “‘Surplusage’ comes of the French ‘surplus,’ that is, an overplus, and signifies in the law an addition of more than needs which sometimes is the cause that a writ shall abate, but in pleading many times it is absolutely voyd, and the residue of the plea shall stand good” (Termes de la Ley).

SURRENDER. (1) “‘Surrender,’ *sursum redditio*, properly is a yeelding up an estate for life or yeares to him that hath an immediate estate in reversion or remainder, wherein the estate for life or yeares may drowne by mutuall agreement betweene them” (Co. Litt. 337 b; see thereon Butler’s note, 294, where it is said “a surrender differs from a release in this respect, that the release operates by the greater estate’s descending upon the less—a surrender is the falling of a less estate into a greater”). See hereon Co. Litt. 338 a, *et seq.*; Touch. ch. 17; *Burton v. Barclay* 9 L.J.O.S.C.P. 238; cp. RELEASE; RENUNCIATION; RESIGNATION.

(2) Surrender “by act or operation of law” (Statute of Frauds (29 Car. 2, c. 3), s.3) is “where the owner of a particular estate has been a party to some act, the validity of which he is by law afterwards estopped from disputing, and which would not be valid if his particular estate had continued to exist” (*per Parke B.*, delivering the judgment, *Lyon v. Reed* 13 L.J. Ex. 381); or, in other words, such a surrender (as distinguished from a surrender by deed (Real Property Act 1845 (c. 106), s.3)) is where the parties accomplish a state of things (other than a mere agreement to surrender, or a cancellation) which is inconsistent with the continuance of the particular estate. Examples of such a surrender are—

(a) A valid, not voidable, and perfected re-demise between the same landlord and tenant (*Nicholls v. Atherstone* 10 Q.B. 944; *Easton v. Penny* 67 L.T. 290; see

hereon *Knight v. Williams* [1901] 1 Ch. 749; *Canterbury v. Cooper* 100 L.T. 597), “even for a shorter term than the old term, if the new term coincides with any part of the old” (*per* Willes J., *Phené v. Popplewell* 12 C.B.N.S. 334), and which re-demise may be by parol (*Nicholls v. Atherstone* *sup.*; *Fenner v. Blake* [1900] 1 Q.B. 426) if for a term grantable by parol (*Forquet v. Moore* 7 Ex. 870), though the old demise was by deed (*Whitley v. Gough Dyer*, 140, pl. 43). A mere agreement for a re-demise will not suffice (*Forquet v. Moore* *sup.*).

(b) “An agreement between a landlord and tenant that the tenancy shall be put an end to, if such agreement is acted on by a change of possession. In my opinion, it is quite immaterial whether the landlord himself takes possession or a third person” (*per* Keating J., *Phené v. Popplewell* *sup.*; see hereon *Thomas v. Cook* 2 B. & Ald. 119; *Dodd v. Acklom* 13 L.J.C.P. 11; *Grimman v. Legge* 8 B. & C. 324; *Doe d. Hudleston v. Johnstone M’Cle. & Y.* 141; *Johnstone v. Hudleston* 4 B. & C. 922; *Bessel v. Landsberg* 7 Q.B. 638; *Griffith v. Hodges* 1 C. & P. 419; *Redpath v. Roberts* 3 Esp. 225). A mere agreement to surrender (*per* Brett L.J., *Oastler v. Henderson* 2 Q.B.D. 577; *Re Panther Lead Co.* [1896] 1 Ch. 978), or the mere acceptance of key, without some act of taking possession, will not suffice (*Oastler v. Henderson* *sup.*, where Brett L.J., explained *Phené v. Popplewell* *sup.*; *Wallis v. Hands* [1893] 2 Ch. 75; *Furnivall v. Grove* 8 C.B.N.S. 496; *Cannan v. Hartley* 9 C.B. 634; *Whitehead v. Clifford* 5 Taunt. 518).

(c) Resumption of possession by the landlord without opposition by the tenant (*Walls v. Atcheson* 3 Bing. 462).

(d) Though cancellation of a lease is not, of itself, a surrender by operation of law (*Doe d. Courtail v. Thomas* 9 B. & C. 288), yet it may be important collateral evidence thereof (*Walker v. Richardson* 6 L.J. Ex. 229; *Davison v. Gent* 26 L.J. Ex. 122). The mere fact that the tenants of a house had vacated it while owing rent on it did not constitute a surrender by them of the tenancy (*Preston Borough Council v. Fairclough*, *The Times*, December 15, 1982).

(3) “Surrender of a tenancy” (Landlord and Tenant Act 1954 (c. 56), s.17) means an actual surrender and does not cover an agreement to surrender in the future (*Re Hennessey’s Agreement*; *Hillman v. Davison* [1975] Ch. 252).

(4) By accepting a surrender, a lessor waives his right to forfeiture, and under a forfeiture an under lessee, and all persons claiming under the lessee, lose their interest—*secus* under a surrender even though the lessor had the right to forfeit, which right he had not exercised: see *Great Western Railway v. Smith* 2 Ch. D. 235; *Mellor v. Watkins* L.R. 9 Q.B. 400; *Parker v. Jones* [1910] 2 K.B. 32. See also Law of Property Act 1925 (c. 20), ss.139, 150.

(5) Surrender of copyholds and admittance thereon is the method of conveyance of copyholds, *inter vivos*: see hereon 2 Bl. Com., ch. 22. The need of a surrender to the use of a will was abolished by an Act concerning the Disposition of Copyhold Estates by Will 1815 (c. 192) (see Wills Act 1937 (c. 26), s.3).

(6) (a) Surrender of shares, as to resolution for: see *Eichbaum v. Chicago Grain Elevators* [1891] 3 Ch. 459.

(b) Where a surrender of shares has the effect of reducing capital, it can only be supported when their forfeiture is justifiable and when it is, in effect, a form of forfeiture (*Bellerby v. Rowland & Marwood’s S.S. Co.* [1902] 2 Ch. 14). See also *Rowell v. Rowell & Son Ltd.* [1912] 2 Ch. 609.

(7) “Surrender,” as regards stamp duty: see *Firth v. Inland Revenue Commissioners* [1904] 2 K.B. 207, cited DISCHARGE.

(8) (Finance Act 1900 (c. 7), s.11). Portions payable after the death of a tenant for life and paid under a family arrangement within three years before his death.

were held to have been “surrendered” within the section and therefore to be chargeable with estate duty (*De Trafford v. A.-G.* [1935] A.C. 280).

(9) “Liable to be surrendered”: see *Re Galwey* [1896] 1 Q.B. 230.

“Surrender or extinction” of prior interests: see EXTINGUISHMENT.

See DEEMED TO HAVE BEEN SURRENDERED; INSTRUMENT OF SURRENDER.

SURROGATE. “Is he who is appointed in the stead of another, most commonly of a bishop or his chancellor” (*Termes de la Ley*).

SURROUNDING CIRCUMSTANCES. See *Kettle v. Dunsker and Wakefield* 43 T.L.R. 770.

SURVEY. See VIEW; SUBJECT TO.

A demise of land at an acreage rent, “subject to survey,” means that the acreable contents shall be ascertained by actual measurement for the purpose of fixing the amount of rent (*Persse v. Malcolmson* Ir. Rep. 5 C.L. 572).

SURVEYOR. (1) In Public Health Act 1875 (c. 55), “‘surveyor’ includes any person appointed by a rural authority to perform any of the duties of surveyor under this Act” (s.4). But that wide definition did not extend to the “surveyor” to be appointed by an urban authority under s.189, and “the surveyor,” who, in an urban district, had to make the report mentioned in s.16, did not include a person temporarily appointed to perform the duties of a surveyor and who was subject to dismissal at a week’s notice (*Lewis v. Weston-super-Mare* 40 Ch. D. 55). The meaning of “surveyor” in Public Health Act 1875, was adopted for the other Public Health Acts: see Public Health Act 1890 (c. 59), s.11(3); Private Street Works Act 1892 (c. 57), s.5. But in Metropolis Management Act 1855 (c. 120), s.105, the phrase was “surveyor for the time being,” which possibly did not mean the permanent surveyor, but might include a surveyor appointed for a particular purpose, e.g. to apportion paving expenses (*Kendal v. Lewisham* 1 L.G.R. 416; 2 L.G.R. 31).

(2) “Surveyor of highway” (Highways and Bridges Act 1891 (c. 63), s.3) see *Hertfordshire County Council v. Barnet* [1902] 2 K.B. 48.

(3) The individual members of a district council were not surveyors of highways, within Highway Act 1835 (c. 50), s.46 (*Buckley v. Hanson* 77 L.T. 664).

(4) The “surveyor or valuer” whose report as to the value of property will exonerate trustees if they “reasonably believe” him “to be an able, practical, surveyor or valuer” (Trustee Act 1893 (c. 53), s.8 (1)—see Trustee Act 1925 (c. 19), s.8 (1)) must be one employed and instructed by the trustees in the very matter to which the report relates, and the report must advise the trustees as to the particular investment (*Re Walker* 59 L.J. Ch. 386). See hereon *Shaw v. Cates* [1909] 1 Ch. 389, and *Palmer v. Emerson* [1911] 1 Ch. 758, cited INVESTMENTS.

(5) District surveyor: see London Building Act 1894 (c. ccxiii), Pt. 13, on which see *Westminster v. Watson* [1902] 2 K.B. 717.

“County surveyor”: see COUNTY.

See OUTGOING SURVEYOR; QUANTITY SURVEYOR.

SURVIVE. (1) (a) “Survive” imports that the person who is to survive must be living at the death of the person whom, or at the happening of the event which, he is to survive (*Gee v. Liddell* L.R. 2 Eq. 341).

(b) This case was followed in *Re Allsop, Cardinal v. Warr* [1968] Ch. 39 where it was held that a bequest to such children of a particular class “as shall survive me”

excluded all those born after the testator's death, as survival connotes existence during the testator's lifetime.

(c) In *Gee v. Liddell* *supra*, Romilly M.R., said, "My opinion is that the meaning of the word 'survive' or 'survivor' imports that a person who is to survive must be living at the time of the event which he is to survive. I have consulted several dictionaries on this subject. I have consulted Johnson and Richardson and the authorities cited by them; and in all instances it appears to me to mean to 'outlive,' that is, to be alive at the time of a particular event, or the death of a particular person, which event or person the other is to survive. It is true that Dr. Johnson puts as one of the meanings, 'to live after another' . . . But all the passages from the English writers cited tend to the conclusion that the person who survives an event must be living at the time when that event takes place, and that 'to live after' is somewhat ambiguous in itself." On a context, "survive" has been construed "to live after" (*Re Clark* 3 D.G.J. & S. 111; but see thereon *per Chitty J.*, *Re Delany* 39 S.J. 468, and *per Buckley J.*, *Re Heath* 48 S.J. 416). See *Reed v. Braithwaite* L.R. 11 Eq. 514; *Ranelagh v. Ranelagh* 1 L.J. Ch. 183; *Re Singh* [1914] W.N. 90.

(2) Bequest, in remainder after life interests, for "surviving sister or sisters of my wife, or their heirs"; held, that "surviving meant surviving the testator (*Stannard v. Burt* 52 L.J. Ch. 355); see also *Spurrell v. Spurrell* 22 L.J. Ch. 1076. In a similar bequest, "surviving" was held to mean surviving the tenant for life (*Re Fox* 13 W.R. 1013; see also *Littlejohns v. Household* 21 Bea. 29; *Re Benn* 29 Ch. D. 839). And, besides its natural meaning, "surviving" may mean "surviving by issue"—a stirpital surviving (*Re Bilham* [1901] 2 Ch. 169, commenting on *Waite v. Littlewood* 8 Ch. 70, *Lucena v. Lucena* 7 Ch. D. 255, *Re Benn* 29 Ch. D. 889, and *Re Bowman* 41 Ch. D. 531, cited SURVIVOR, but *Re Bilham* was distinguished in *Re Friend* [1906] 1 Ch. 47; see also *Morrison's Trustees v. Ward* 30 Sc. L.R. 823; *Lamont v. Millar* [1921] W.N. 334.

(3) A phrase such as "surviving children" in a will may be taken either in its natural sense as meaning those children alive at the testator's death or in some other, secondary sense. The natural sense is the one to be preferred and will yield to the secondary meaning only if the context shows that this would defeat the testator's intention. The fact that a fund is originally given in shares settled on stirpital trusts and that, on failure of the trusts in favour of one stirps, the share of that stirps is directed to accrue to the shares of the survivors of the original life tenants to be held on the trusts of their original shares, is not good grounds for holding that the testator intended the word "survivor" to bear a secondary meaning (*Re James's Will Trusts* [1962] Ch. 266).

(4) A gift to a child, or other ISSUE, of a testator, does not LAPSE by death in the testator's lifetime if he or she leave issue, living at the testator's death, but shall take effect as if the death of the child or other issue of the testator had happened immediately after his death (Wills Act 1837 (c. 26), s.33); therefore, where a testator directs that in case A (his daughter) shall "survive" him, her share shall be part of the funds comprised in her marriage settlement, and she dies in his lifetime leaving issue living at his death, the share intended for her becomes part of the settlement funds (*Re Hone* 22 Ch. D. 663).

(5) "Should E not survive," in a will, meant attain the age of twenty-one (*Re Hill* [1947] L.J.R. 681).

(6) "If she shall survive her now intended coverture": see *Re Crawford* [1905] 1 Ch. 11.

(7) "Surviving." As to the application of this and similar words to children *en ventre sa mere*, see *Elliott v. Joicey* [1935] A.C. 209. A gift to a class of individuals

“surviving” means persons of that class living at the event in question (*Re Castle* [1949] Ch. 46). See also *Re Hodgson* [1952] 1 All E.R. 769.

See SURVIVOR; SURVIVING TRUSTEE.

SURVIVING CHILDREN. This phrase includes a sole surviving child (*Re Brown* [1896] W.N. 164). See hereon *Re M'Dougal* 39 Sc. L.R. 375; *Re Watson* 10 Sc. L.T. 388. See also SURVIVOR; CHILD.

SURVIVING HUSBAND. See *Bosworthick v. Clegg* 45 L.T.R. 438, cited HUSBAND.

SURVIVING SISTERS. See *Carver v. Burgess* 24 L.J. Ch. 401.

SURVIVING TRUSTEE. (1) See *Sharp v. Sharp* 2 B. & Ald. 405. Cp. CONTINUING TRUSTEE, and see now Trustee Act 1925 (c. 19), s.36.

(2) A “surviving trustee,” whose representatives may appoint a new trustee (Conveyancing Act 1881 (c. 41), s.31(1); see now Trustee Act 1925 (c. 19), s.36), must survive not only his nominated colleagues but also his testator (*Nicholson v. Field* [1893] 2 Ch. 511). See also LAST.

SURVIVOR. (1) “Survivor” is “a word which has caused perhaps more difficulty in the interpretation of wills than any other in the language” (*per* Rigby L.J., *Re Pickworth* [1899] 1 Ch. 642, cited EITHER).

(2) “If there is a life estate followed by a gift to a number of persons or the survivors of them, the general rule of construction is that the word ‘survivors’ means those who survive the tenant for life; if there is not a life estate, then *prima facie* as a general rule it refers to those who survive the testator” (*per* Cotton L.J., *Ralph v. Carrick* 11 Ch. D. 873); or, as it may be otherwise stated, “the word ‘survivors’ refers commonly to the time of division” (*per* Kay J., *Re Mortimer* 54 L.J. Ch. 415). This is sometimes called the rule in *Cripps v. Wolcott* (4 Mad. 11); and it applies as well to realty as to personalty (*Re Gregson* 34 L.J. Ch. 41; *Howard v. Collins* L.R. 5 Eq. 349). See also as to period of survivorship, 3 Jarm. (8th ed.) 1983 *et seq.*; Theobald (10th ed.) 476, 485; and for a context leading to the same conclusion as *Cripps v. Wolcott* see *Wordsworth v. Wood* 1 H.L. Ca. 129.

(3) “Survivors,” generally speaking, includes “survivor,” and should be read as equivalent to “survivors or survivor” (see *Re Mortimer* *sup.*; *Hearn v. Baker* 2 K. & J. 383; see also SURVIVING CHILDREN). “Powers conferred on . . . trustees ‘and the survivors of them’ were held not to be exercisable by a single survivor” (Lewin (15th ed.) 325, citing *Hibbard v. Lamb* 1 Amb. 309; see now *Re Smith* [1904] 1 Ch. 139). See also SURVIVING TRUSTEE.

(4) (a) “The question whether the word ‘survivor’ (in a will) is to be read as ‘other’ has been the subject of innumerable cases; but there is one never-failing guide to all the authorities, *viz.*—it is the duty of the court to ascertain what the meaning of the testator is, and if it can satisfy itself that the word ought to be read as ‘other,’ it is right to substitute the one word for the other” (*per* Bacon V.-C., *Re Johnson* 53 L.J. Ch. 1117); but “when unexplained by other parts of the will, it is to be interpreted according to its strict and literal meaning” (3 Jarm. (8th ed.) 1961). See also *King v. Frost* *inf.*; *Inderwick v. Tatchell* *inf.*; *Garland v. Smyth* [1904] 1 Ir. R. 35; *Re Mears* [1914] 1 Ch. 694; *Powell v. Hellicar* [1919] 1 Ch. 138.

(b) For an elaborate discussion of the cases hereon, see 3 Jarm. (8th ed.) 1961–1976; see also Wms. Exs. (13th ed.) 882; Theobald (10th ed.), 480–483. See

also *Crowther v. Evans* 13 L.T. 271; *Waite v. Littlewood* 8 Ch. 70; *Lucena v. Lucena* 7 Ch. D. 225; *Re Horner, Pomfret v. Graham* 19 Ch. D. 186; *Re Benn* 29 Ch. D. 839; *Re Palmer* L.R. 19 Eq. 320; *Re Smith* 42 Sc. L.R. 657, and cases there cited; *Paterson's Trustees v. Brand* 31 Sc. L.R. 200; cp. *Ward v. Lang* 30 Sc. L.R. 823, followed in *Belfrage v. Monteith* 31 Sc. L.R. 499; *Re Bilham* [1901] 2 Ch. 169, cited SURVIVE. "In *Re Palmer* I referred to several cases all of them authorities in favour of reading 'survivor' as 'other,' when it was requisite to do so in order to give effect to the intention. There is no magic in the word 'survivor' (*per Malins V.-C.*, *Cross v. Maltby* L.R. 20 Eq. 382).

(c) Where there is a gift to several, or to a class, as tenants in common in tail, with remainder as to the share of each to the 'survivors' or 'surviving' devisees in tail, with a limitation over on failure of issue of all the devisees, the words 'survivor' or 'surviving' will be construed as 'other,' so as to create cross-remainders among the devisees by express limitation; either in a deed or will (*Doe v. Wainewright* 5 T.R. 427; *Cole v. Sewell* 2 H.L. Ca. 186; *Smith v. Osborne* 6 H.L. Ca. 375).

(d) But in *Re Bowman*, *Whytehead v. Boulton* (41 Ch. D. 531), Kay J., said, "It seems to me that the decisions establish the following propositions: (i) Where the gift is to A, B, and C equally, for their respective lives, and after the death of any to his children, but if any die without children to the survivors for life, with remainder to their children, only children of survivors can take under the gift over; (ii) if, to similar words, there is added a limitation over if all the tenants for life die without children, then the children of a predeceased tenant for life participate in the share of one who dies without children after their parent; (iii) they also participate, although there is no general gift over, where the limitations are to A, B, and C equally, for their respective lives, and after death of any to his children, and, if any die without children, to the surviving tenants for life and their respective children in the same manner as their original shares."

(e) See this last proposition acutely examined and dissented from, 33 S.J. 572; see also *Re Bowman* sup., distinguished in *Re Rubbins* 79 L.T. 313, and criticised in *Re Robson* [1899] W.N. 260. *Re Bowman* was also dissented from by Cozens-Hardy L.J., in *Harrison v. Harrison* [1901] 2 Ch. 136; and by C.A. in *Inderwick v. Tatchell* [1901] 2 Ch. 738, which last case was affirmed in House of Lords [1903] A.C. 120.

(5) (a) When "survivor" "is applied to a class of persons, and individuals of that class are named, the natural and obvious meaning of the word is the longest liver of those who are named" (*per Westbury C.*, *Taaffe v. Conmee* 10 H.L. Ca. 77; see that case discussed and distinguished, *Foley v. Gallagher* 2 L.R. Ir. 389).

(b) In *Re Hill to Chapman* (53 L.J. Ch. 541; 54 *ibid.* 595), an unsuccessful attempt was made to induce the court to read "survivor" as equivalent to "longest liver": see also *Re Pickworth* 68 L.J. Ch. 328, cited EITHER. The rule, in this connection, is thus stated by Turner L.J., in *White v. Baker* 29 L.J. Ch. 577: "Where there is a bequest to A for life, and after his death to B and C, 'or the survivor of them,' some meaning must be attached to the words 'the survivor.' They may refer to any one of three events—

- "(1) to one of the persons named surviving the other;
- "(2) to one of them only surviving the testator; or
- "(3) to one of them only surviving the tenant for life;

and in the absence of any indication to the contrary they are taken to refer to the latter event, as being the more probable one to have been referred to." See judgment of Cotton L.J., *Re Hill to Chapman* sup., for a criticism on *White v. Baker*; see also *Scurfield v. Howes* 3 Bro. C.C. 90; *Re Hunter* L.R. 1 Eq. 295. See *Re*

Poultney [1912] 2 Ch. 451, where the above statement of Turner L.J., was approved and followed by Cozens-Hardy M.R.

(c) The word “survivors” “does not mean ‘longest lived’ in the general sense, but those who are living when the particular event contemplated happens” (*per* Kay J., *Re Mortimer, Griffiths v. Mortimer* 54 L.J. Ch. 415). On the words of the will under consideration in *Re Mortimer* it was held that on the death of the last survivor of a class of tenants for life who were to take *inter se* by survivorship, the capital fell into the residue and did not belong to the estate of such last survivor. The learned judge followed *Nevill v. Boddam* (29 L.J. Ch. 738) and *Re Corbett* (29 L.J. Ch. 458); and commented on *Maden v. Taylor* (45 L.J. Ch. 569) and *Davidson v. Kimpton* (18 Ch. D. 213). See also *per* North J., *Askew v. Askew* (57 L.J. Ch. 629), and *per* Privy Council, *King v. Frost* (15 App. Ca. 548). But in *Re Roper* (41 Ch. D. 409), Chitty J., differed from *Re Mortimer*, *Re Corbett*, and *Askew v. Askew* and, following *Maden v. Taylor* and *Davidson v. Kimpton* construed “survivors” as “longest lived”; see also *Browne v. Rainsford* Ir. Rep. 1 Eq. 384; *per* Monroe J., *Re Hutchins* 19 L.R. Ir. 223. In *Re Ranelagh v. Ranelagh* (41 W.R. 549), Chitty J., repented of his decision in *Re Roper* and followed *King v. Frost*.

(6) In *Crozier v. Fisher* (6 L.J.O.S. Ch. 118), “survivors,” in a bequest to children, was contextually held to mean surviving so as to attain their respective ages of 21.

(7) As to whether a limitation to A, B, and C, “and the survivors or survivor of them and the heirs of such survivor,” makes A, B, and C joint-tenants for life, with a contingent remainder in fee to the survivor, see 2 Jarm. (8th ed.) 1785; as to the effect of a limitation to A, B, and C “as joint tenants and not as tenants in common, and to the survivor or longest lived of them his heirs and assigns,” see *Quarm v. Quarm* [1892] 1 Q.B. 184.

See SURVIVE.

SURVIVORSHIP. See BENEFIT OF SURVIVORSHIP.

Presumption of survivorship: see PRESUMPTION, para. (9).

SUSCEPTIBLE. Goodwill is “a matter susceptible of valuation” within partnership articles (*Steuart v. Gladstone* 10 Ch. D. 626).

SUSPECTED PERSON. (1) The power to arrest without warrant a “suspected person” (Vagrancy Act 1824 (c. 83), s.4, as amended by the Prevention of Crimes Act 1871 (c. 112), s.15, and the Penal Servitude Act 1891 (c. 69), s.7) is confined to arresting persons who are already “suspected persons” before the occasion on which the power is sought to be exercised (*Ledwith v. Roberts* [1937] 1 K.B. 232; *Stevenson v. Aubrook* [1941] 2 All E.R. 476). See *Rawlings v. Smith* [1938] 1 K.B. 675; *R. v. Fairbairn* [1949] 2 K.B. 690; cf. also *Gorman v. Barnard* [1940] 2 K.B. 570; *Cohen v. Black* 111 L.J.K.B. 573. A conviction five years before does not make the accused a “suspected person” (*Bridge v. Campbell* 63 T.L.R. 470); it is not essential that police officers making an arrest should know of the accused’s previous convictions (*R. v. Clarke* [1950] 1 K.B. 523; *Easton v. Johnstone* [1947] V.L.R. 106). See also *Pyburn v. Hudson* [1950] 1 All E.R. 1006. To support a conviction under this section the acts which caused the defendant to be a “suspected person” and the act which causes him to be arrested must be separate acts but need not be different in kind (*Cosh v. Isherwood* [1968] 1 W.L.R. 48).

(2) “Suspected persons” (Vagrancy Act 1824 (c. 83), s.4). Two persons who were seen to try the handles of four parked cars, and were apprehended when they

returned to the first, were not “suspected persons” for the purpose of this section as up to the time of trying the door handles they had given rise to no suspicion. These words apply only to persons who, apart from the particular occasion, bring themselves into the class of suspected persons by reason of their antecedent conduct (*Fraser v. Healy* 1966 S.L.T. 263).

(3) “Suspected person or reputed thief”: see *Hartley v. Ellnor* 86 L.J.K.B. 938.

SUSPEND. (1) Where there is a clause in a lease that in case of fire the rent shall be “suspended” until the premises are reinstated, it might be contended that “suspended” means only “postponed”; but more reasonably it means “temporarily released.” In this sense the word is obviously used in the following passage from the judgment in *Morrison v. Chadwick* (7 C.B. 283): “The eviction by a landlord of his tenant from a part of the premises creates a suspension of the entire rent during the continuance of the eviction until the tenant enters and resumes the possession—see the authorities cited in 1 Wms. Saund. 204, n. 2” (see also **SUSPENSE**). But it would avoid dispute to provide that the rent shall “cease and be suspended” or shall “be suspended and cease to be payable.”

(2) Notice by a debtor that he “has suspended, or is about to suspend, payment” (Bankruptcy Act 1883 (c. 52), s.4(1) (*h*) (see now Bankruptcy Act 1914 (c. 59), s.1(1) (*h*))); “To ‘suspend,’ in its natural signification, rather means something which may not be permanent than that which is. *A fortiori*, of course, a perpetual stoppage of payment would be a suspension, and something more; but to say that ‘suspension’ can mean nothing in this context but a necessarily permanent stoppage of payment, is a proposition to which I cannot agree” (*per* Lord Selborne, *Crook v. Morley* [1891] A.C. 316). See also **NOTICE**.

(3) *Semble*, the execution by a debtor of a deed of arrangement was a “suspension of payment” within Bankruptcy Act 1849 (c. 106), ss.211, 225 (*cp.* now Bankruptcy Act 1914 (c. 59), s.16) (*Phillips v. Surridge* 9 C.B. 743).

(4) As to the old doctrine, an action personal once suspended always suspended, see *Ford v. Beech* 11 Q.B. 867, and cases there cited. *Cp.* **FORBEAR**.

(5) “Suspension” (Essential Work (General Provisions) (No. 2) Order, 1942 (No. 1594), art. 4(3)): suspension by an employer of a workman for indiscipline which was recognised by this order was in truth dismissal mitigated, at the discretion of the employer, by a promise to re-employ (*Marshall v. English Electric Co.* 61 T.L.R. 379).

(6) When applied to a contract of employment, “suspend” means that the workman ceases to be under any present duty to work, and the employer ceases to be under any consequential duty to pay (*Bird v. British Celanese Ltd.* [1945] K.B. 336).

(7) “Suspension of employment” (Industrial Relations Act 1971 (c. 72), s.167(1)(*b*)) does not refer to a mere suspension from duty but to temporary discontinuance of both work and pay under a contract which permits such discontinuance whilst the contract of employment remains in force (*Cory Lighterage v. Transport and General Workers Union* [1973] 2 All E.R. 558).

Cp. **POSTPONE**; **STOP**.

SUSPENSE. (1) “‘Suspension’ or ‘suspense’ is a temporal,” *i.e.* temporary, “stop of a man’s right” (Cowel).

(2) “Suspense commeth of *suspendeo*, and in legall understanding is taken when a seignorie, rent, profit apprender, etc., by reason of unitie of possession of the seignorie, rent, etc., and of the land out of which they issue, are not *in esse* for a

time, *et tunc dormiunt*, but may be revived or awaked. And they are said to be extinguished when they are gone for ever, *et tunc moriuntur*, and can never be revived; that is, when one man hath as high and perdurable an estate in the one as in the other" (Co. Litt. 313 a). As to suspension, see *Burton v. Barclay* C.P. 239, SUSPEND; cp. MERGER.

(3) Where beneficial interests in property vested in the Custodian of Enemy Property were by virtue of the Trading With the Enemy Act 1939 (c. 89), s.7, placed in "statutory suspense," their existence was preserved but they could not be presently asserted or enforced in the courts (*Banks voor Handel en Scheepvaart N.V. v. Slatford* (No. 2) [1952] 2 T.L.R. 861).

"Suspension in water": see SOLID MATTER.

As to suspension of the clergy: see Phil. Ecc. Law, 1072.

SUSTAIN. See UPHOLD.

SUSTAINED. "Costs sustained by reason of": see BY REASON.

SWALLETS. "Funnel-shaped fissures in the rock forming the Mendip Hills" (Dart, *Vendor and Purchasers* (6th ed.), 416).

SWEAR. 'Stat. Def., Interpretation Act 1978 (c. 30), Sched. 1.

See OATH; PERJURY.

SWEATING. (1) The term "sweating system" is obviously figurative. "It involves a system oppressive to the workman whereby an unconscionable or unjust profit is wrung from the sweat of his brow by paying him insufficient wages for his work. There is generally a middleman taking advantage of the circumstances in which the workman is placed and grinding down, for his own profit, below the fair rate the wages of those employed. . . . Where the system prevails the epithet 'pernicious' is not at all too strong" (*per* Chitty J., *Collard v. Marshall* [1892] 1 Ch. 571).

(2) Exception, in a bill of lading, exonerating the shipowners from responsibility for "sweating, . . . explosion, heat, fire at sea or on shore," means as regards "sweating," damage from moisture dropping on to the cargo, (*e.g.* maize) from condensation of evaporated moisture in the hold, and does not include the general heating of the cargo, though accompanied by moisture, or wet to the cargo from contact with the iron of the ship; and, as regards "heat" (having regard to its position between "explosion" and "fire at sea or on shore") means heat from some extraneous source, and not heat from contact with moisture or from the cargo's own spontaneous combustion (*The Pearlmoor* [1904] P. 286).

SWEEP. See EVENT; SUBSCRIPTION OR CONTRIBUTION.

SWEEPAGE. See HERBAGE.

SWERVE. See *The Olympic and H.M.S. Hawke* [1913] P. 214.

SWINDLER. (1) A swindler is "a cheat, one who lives by cheating" (Jacob). See hereon *Hewson v. Cleeve* [1904] 2 Ir. 536. ~

(2) "Every chindropper, thimblor, loaded dice player, and other swindler of that or any similar description" (Aberdeen Police and Waterworks Act 1962 (c. cciii), s.240): see *Melvin v. Lamb* 28 Sc. L.R. 49.

See CHEAT; TOUT.

SWING BRIDGE. Stat. Def., Highways Act 1980 (c. 66), s.329.

SWOLING. A swoling, or suling, of land "is the same with *Carucata terræ*" (Cowel). See CARUCATA.

SWORN APPRAISER. "Sworn appraiser," *e.g.* by whom a distress under the Tithe Act 1836 (c. 71), had to be valued, must be reasonably competent, but need not be professional, appraisers (*Roden v. Eyton* 6 C.B. 427).

See APPRAISER.

SWORN DEPOSITIONS. In extradition proceedings the unsworn statements of alleged accomplices were accepted as "sworn depositions" within the meaning of art. X of the Extradition Treaty (Sweden and Norway) Order, 1873, as, after making the statements, the accomplices had been taken before a court and, having been reminded of the penalties for giving false evidence, had acknowledged the statements as true (*R. v. Governor of Pentonville Prison ex p. Singh* [1981] 1 W.L.R. 1031).

SYLVA. " 'Sylva caedua,' as a rule, is equivalent to coppice" (*per* Bowen L.J., *Dashwood v. Magniac* [1891] 3 Ch. 306, cited **TIMBER**). See also Prohibition to spiritual courts Act 1370 (45 Edw. 3, c. 3); **SILVA CÆDUA**.

SYMBOL. SEE **TRADE-MARK**.

SYNDICATE. (1) *Seemle*, "syndicate" is not equivalent to firm, company, or partnership; its use in connection with a marine underwriting will not convert a liability, otherwise several, into a joint liability (*Tyser v. Shipowners' Syndicate* [1896] 1 Q.B. 135).

(2) Probably "syndicate" first came into the law relating to companies in *New Sombrero Co. v. Erlanger* 3 App. Ca. 1218, which see as to the liabilities of a syndicate in promoting a company. See also *Re Lady Forrest Co.* [1901] 1 Ch. 582; *Re Leeds & Hanley Theatres* [1902] 2 Ch. 809.

SYNODAL. "Is a tax paid in money to the bishop or his archdeacon, by the inferior clergy, at their Easter visitation" (*Termes de la Ley*).

SYSTEM. (1) A single instance of avoidance of surtax could not be said to be systematic and not exceptional within s.33(4) of the Finance Act 1927 (c. 10) (*Bilsland v. Inland Revenue Commissioners* [1936] 2 K.B. 542).

(2) "System of working the mine" (Mines and Quarries Act 1954 (s.34(1) (a) (i))). These words relate to the method of mining the coal, and not to the actual machinery and plant being used (*Lister v. National Coal Board* [1970] 1 Q.B. 228).

Death from causes "arising within the system of the insured": SEE **ARISING**; **SECONDARY**.

T

TABERNACLE. *Semble*, a tabernacle for the reception of the reserved sacrament is not a lawful church ornament (*Kensit v. St. Ethelburga* [1900] P. 80).

TABLE A. See Companies Act 1948 (c. 38), Sched. I.

TABLEAUX VIVANTS. See *Hanfstaengl v. Empire Palace* [1894] 3 Ch. 109, cited COPY.

TACK. (1) "Tack," is the Scottish term for lease; but see discussion by counsel, *Sweetmeat Co. v. Inland Revenue Commissioners* 64 L.J.Q.B. 88.

(2) "A fearme, in the north parts, is called a tacke" (Co. Litt. 5 a). See FARM.

(3) To take in cattle to tack, is to AGIST them.

(4) (a) Tacking a mortgage was the doctrine that enabled a mortgagee who was secured by the legal estate to tack on to that security another security which he held on the same property and so give the latter security priority over a mesne incumbrance prior in date thereto, if he took his other security without notice of the mesne incumbrance to be so displaced. Cp. CONSOLIDATE. See now Law of Property Act 1925 (c. 20), s.94; Land Registration Act 1925 (c. 21), s.30.

(b) The doctrine did not extend to lands in Yorkshire (s.16, Yorkshire Registries Act 1884 (c. 54)).

TACKLE. (1) "It has been said that by the words 'tackle, furniture, apparel, and all other her instruments, thereunto belonging,' the boats of a ship are not transferred (Molloy, De Jure Mar., B. 2, c. 1, s.8). And it has been held that ballast is not part of the furniture of a merchant ship (*ibid.*, *Kynter's Case* 1 Leon. 46); and that under the words 'Stores, tackle, apparel, etc.,' kintlage does not pass (*Lano v. Neale* 2 Starkie, 105)"; 1 Maude & P. (4th ed.) 53, n. (x). See FURNITURE.

(2) An insurance upon a ship, employed in the Greenland trade, on "ship, tackle, apparel, and furniture," does not by the usage of the trade cover the fishing tackle (*Hoskins v. Pickersgill* 3 Doug. 222).

(3) As regards a bill of lading, shipowners' liability to cease "when the goods are free of the ship's tackle": see *Chartered Bank of India v. British India Steam Navigation Co.* 53 S.J. 446.

(4) As to goods "taken from the ship's tackle directly on their coming to hand": see *The Coahoma County* [1924] P. 95.

(5) "Within reach of the ship's tackle" (in charterparty): see *Dampselskab Svendborg v. London, Midland & Scottish Railway* [1930] 1 K.B. 83. See also *The Aldington Court* [1932] P. 21; *British Oil Mills v. Moor Line* 41 Com. Cas. 53.

TAIL. (1) To hold in fee tail, or in tail, is "where a man holdeth certaine lands or tenements to him and to his heires of his body begotten" (Termes de la Ley); that is a general tail. A special tail is one that "is restrained to certain heirs of his body, and does not go to all of them in general" (Wms. R.P. (24th ed.), Part II, ch. 3), e.g. heirs of his body by a specified woman, or tail male. See hereon Litt. ss.13-31; Co. Litt. 18 b-27 b; 2 Bl. Com. 110-119; WESTMINSTER.

(2) "Tail male": see *Trevor v. Trevor* 1 H.L. Ca. 239. In *Re Alexander* 54 S.J. 602, "tail male" was read as a clerical error, and included a person who had an estate in tail general. See Law of Property Act 1925 (c. 20), ss.130–133.

(3) Special tail male: see *Pelham-Clinton v. Newcastle* 69 L.J. Ch. 875 affirmed [1902] 1 Ch. 34; affirmed House of Lords [1903] A.C. 111. See Law of Property Act 1925 (c. 20), ss.60, 131.

(4) " 'Tenant in fee taile after possibility of issue extinct' is, where tenements are given to a man and to his wife in especiall taile, if one of them die without issue, the survivor is tenant in tail after possibility of issue extinct. And if they have issue, and the one die, albeit that, during the life of the issue, the survivor shall not be said tenant in tail after possibilitie of issue extinct; yet if the issue die without issue, so as there be not any issue alive which may inherit by force of the taile, then the surviving party of the donees is tenant in taile after possibilitie of issue extinct" (Litt., s.32; see further *ibid.* ss.33, 34; Co. Litt. 27 b–28 b; *Bowles's Case* 11 Rep. 79 b; 2 Bl. Com. 124, 125). Such a person is a tenant for life (Termes de la Ley, "taile after possibility"), so, in Settled Estates Act 1877 (c. 18), s.2, and Settled Land Act 1882 (c. 38), s.58(1)(vii); as to his "qualities and priviledges," see Co. Litt. 27 b, 28 a. See Settled Land Act 1925 (c. 18), s.20. See hereon Wms. R.P. (24th ed.), Part II, ch. 2.

See TENANT IN TAIL.

TAILBOARD. A bridging plate between a car transporter and a trailer is not a "tailboard" within the meaning of reg. 3(1) of the Motor Vehicles (Construction and Use) Regulations 1978 (No. 481). It has to be considered as part of the length of the trailer for the purposes of reg. 73(1) (*Corp. v. Toleman International* [1981] R.T.R. 385).

TAINI. "*Taini*, or *thaini mediocres*," in Domesday, "were freeholders, and sometime called *milites regis*, and their land called *tainland*. . . . But *thainus regis* is taken for a baron" (Co. Litt. 5 b; see further Termes de la Ley, *Thanus*). See TAINLAND.

TAINLAND. "In the book of Domesday, land holden by knight's service was called *tainland*, and land holden by socage was called *reveland*" (Co. Litt. 86 a). But at 5 b, Co. Litt., it is said that land of freeholders generally was called *tainland*: see TAINI.

TAKE. (1) "I think it will be found that in the Lands Clauses Consolidation Act 1845 (c. 18), the word 'take' is used in more than one sense. In the first section the word seems to be used in a general sense. In the preambles to ss.6 and 16, a distinction is drawn between 'purchase of lands by agreement' and 'the purchase "and taking" of lands otherwise than by agreement.' In s.68 the word 'taking' occurs, and it is clear, from *Burkinshaw v. Birmingham & Oxford Junction Railway* (5 Ex. 475) that in that section 'take' means actually take, as distinct from serving a notice to treat or any other kind of constructive taking. Looking at the Lands Clauses Act as a whole, and looking at common parlance and at the language of most Acts which give compulsory powers to public bodies, I think we may say that the word 'take' ought not to be confined to taking of actual possession. When we turn to the Metropolitan Street Improvements Act 1877 (c. ccxxxv), and compare the preamble in which the use of the word 'take' is general, with s.5, and especially with s.31, where the word 'take' is obviously used in a larger sense, I think the safe construction is

that 'take' means either take from the landlord what the landlord has got—namely, his title—or take from the tenant and occupier what the tenant and occupier has got—namely, possession" (*per* Bowen L.J., *Spencer v. Metropolitan Board of Works* 52 L.J. Ch. 258; but see, as to acquiring the landlord's title, the observations of Jessel M.R., *ibid.*, p. 253). Therefore, the conditions imposed by s.33, Metropolitan Street Improvements Act 1877, sup., prior to the authority "taking" lands, did not need to be complied with prior to proceeding with the preliminaries to acquiring the title to such lands, such as serving notice to treat and summoning a jury (*Spencer v. Metropolitan Board of Works* (22 Ch. D. 142).

(2) Interest in land "taken" (s.68, Lands Clauses Consolidation Act 1845 (c. 18), "indicates a possession which somebody had, but had lost" (*per* Mathew L.J., *War v. London County Council* [1904] 1 K.B. 713, cited INTEREST IN LAND).

(3) Lands entered upon and used by a company, under s.85, Lands Clauses Consolidation Act 1845 (c. 18), were lands "taken" within s.80 of that Act (*Charlton v. Rolleston* 28 Ch. D. 237). See further *R. v. Manley-Smith* 67 L.T. 197; *Church v. London School Board* 8 T.L.R. 310.

(4) Erecting a telegraph pole in land was not a "taking" of the land (*Escott v. Newport* [1904] 2 K.B. 369, cited VEST).

(5) As to how far tunnelling under, or arching over, property was a "taking," see *Sparrow v. Oxford, Worcester & Wolverhampton Railway* 19 L.T.O.S. 131; *Pinchin v. London & Blackwall Railway* 24 L.J. Ch. 417; *Re Metropolitan District Railway and Cosh* 13 Ch. D. 607; *Tiverton Railway v. Loosemoore* 9 App. Ca. 480.

(6) Lands "taken or used for the purposes of the works" (s.133, Lands Clauses Consolidation Act 1845 (c. 18)): see *Putney v. London & South Western Railway* [1891] 1 Q.B. 182, cited WORKS.

(7) To divert part of a stream by a waterworks company was not "to take or use" the stream within s.6, Waterworks Clauses Act 1847 (c. 17); such diversion merely "injuriously affects" the land (*Bush v. Trowbridge Water Co.* L.R. 19 Eq. 291).

(8) A direction to trustees "to take a house" for the residence of minors will, if not followed, entitle the minors to the money which ought to have been so expended (*Hutchinson v. Rough* 40 L.T. 289).

(9) To "take and use" a surname: see SURNAME; NAME. See further *Re Drax* 75 L.J. Ch. 317, cited USE.

(10) "Take or use" the title of a profession: see VETERINARY. See further *Brown v. Whitlock* 67 J.P. 451, cited ADDITION; *Blain v. King* [1958] 2 K.B. 30, cited DENTIST.

(11) "'Felonice cepit et asportavit, feloniously took and carried away,' are necessary to every indictment" for theft (4 Bl. Com. 307).

(12) As to the meaning of "take" in s.23, Larceny Act 1861 (c. 96), see *Farey v. Welch* [1929] 1 K.B. 388, where it was held by Avory J., that "take" in this section meant "catch," and not "take away."

(13) "Take fish" (Larceny Act 1861 (c. 96), s.24). To catch fish with the object and intention of returning them to the water unharmed was nevertheless, to "take fish" within the meaning of this section (*Wells v. Hardy* [1964] 2 Q.B. 447).

(14) Game was "taken" when it was snared, though it was neither killed nor removed (*R. v. Glover Russ. & Ry.* 269).

(15) Oysters "taken within the waters of some foreign state" (proviso 1, s.4, Fisheries (Oysters, etc.) Act 1877 (c. 42)), applied to oysters originally taken in foreign waters, although they might have been relaid in England and stored for so long as 4 months (*Robertson v. Johnson* [1893] 1 Q.B. 129; see also *Guyer v. The Queen* 23 Q.B.D. 100, cited GAME).

(16) "Take" salmon (s.22, Salmon Fishery Act 1873 (c. 71)), or trout or char (s.7, Freshwater Fisheries Act 1878 (c. 39)): see *Gazard v. Cooke* 55 J.P. 102; *Stead v. Tillotson* 69 L.J.Q.B. 240.

(17) Chattels or money were "taken" from the owner, so as to constitute a theft, if obtained by frightening him (*R. v. McGrath* L.R. 1 C.C.R. 205; *R. v. Lovell* 8 Q.B.D. 185).

(18) Gas was feloniously taken and carried away when a customer of a gas company, or other person, fraudulently appropriated it (*R. v. White* 22 L.J.M.C. 123).

(19) "Takes" (Larceny Act 1916 (c. 50), s.1(2)(i)). The taker had to have *animus furandi* at the time when he took the property (*Moynes v. Cooper* [1956] 1 Q.B. 439). A person who acquired goods innocently, and without knowing that he had, "took" them, for the purposes of the Larceny Act, at the time he discovered they were in his possession (*Russell v. Smith* [1958] 1 Q.B. 27). In s.1 of the Theft Act 1968 (c. 60), the word used is "appropriates."

(20) "Takes any conveyance" (Theft Act 1968 (c.60), s.12(1)). It is an essential ingredient of the offence that a movement of the conveyance should take place (*R. v. Bogacki* [1973] 2 W.L.R. 937). A person who accidentally sets in motion someone else's motor vehicle does not "take" it within the meaning of this section (*Blayney v. Knight* [1975] R.T.R. 279). The offence is, however, made out where the taking of a vehicle necessarily involves its use as a conveyance, although the taker's intention was only to remove an obstruction, by releasing the handbrake and letting it coast out of the way (*R. v. Bow* [1977] R.T.R. 6).

(21) "Takes . . . a motor vehicle" (Road Traffic Act 1930 (c. 43), s.28(1); Road Traffic Act 1960 (c. 16), s.217(1)). "Takes any conveyance" (Theft Act 1968 (c. 60), s.12(1)). The courts have had some difficulty in deciding what constitutes a "taking" without the owner's consent under these sections in cases where the accused has had authority to use the conveyance for a particular purpose, and then subsequently appropriates it temporarily to his own use. In *Mowe v. Perraton* (1952) 35 Cr. App. R. 194 it was held that a person did not "take" a motor vehicle within the meaning of s.28(1) of the 1930 Act when he made an unauthorised diversion from the route he was authorised to take. This case suggested that a man lawfully entrusted with a conveyance for a limited purpose could not commit the offence if he subsequently used it in excess of that purpose. *Mowe v. Perraton* was distinguished in *R. v. Wibberley* [1966] 2 Q.B. 214, where it was held that a person who, with permission, took his employer's truck home instead of leaving it in the employer's yard, and then later used it for his own purpose, was guilty of taking it and driving it away within the meaning of these sections. *R. v. Phipps* [1970] R.T.R. 209 followed *R. v. Wibberley*, the court rejecting the argument suggested in *Mowe v. Perraton*, and it was followed again in *McKnight v. Davies*, *The Times*, November 13, 1973, where it was held that when an employed driver has authority to use a vehicle but appropriates it to his own use in a manner which repudiates the true owner's rights, and shows assumption of control for his own purposes, he can properly be regarded as having "taken" the vehicle within s.12 of the Theft Act 1968.

(22) "Takes and drives away" (Road Traffic Act 1930 (c. 43), s.28(1); Road Traffic Act 1960 (c. 16), s.217(1)). If a vehicle is moved by someone pushing with someone else steering, it is driven within the meaning of this section (*Shimmell v. Fisher* [1951] W.N. 484). An unauthorized diversion from the route specified by the owner is not a taking and driving away without the owner's consent (*Mowe v. Perraton* [1952] 1 All E.R. 423). A man does not drive a motor-vehicle for the purpose of this section unless he is in control of the steering wheel and also has something to

do with the propulsion. It is not sufficient for him to release the hand brake from the outside so that the vehicle runs away downhill (*R. v. Roberts* [1965] 1 Q.B. 85).

(23) "Takings at sea" in a marine insurance policy means capture or seizure. The words do not cover wrongful misappropriation of cargo by a shipowner (*Shell International Petroleum Co. v. Gibbs (The Salem)* (reversing *Nishina Trading Co. v. Chiyoda Insurance Co.* [1969] 2 Q.B. 449) [1983] 1 All E.R. 745)).

(24) "Take from" (Licensing Act 1953 (c. 46), s.100(1)(b)): the words referred to a completed act; otherwise no offence was committed under the section (*Pender v. Smith* [1959] 2 Q.B. 84).

(25) "Take" a girl under 16 "out of the possession and against the will of her father or mother," etc. (s.20, Offences Against the Person Act 1828 (c. 31); "take," in this connection, did not imply force, actual or constructive; it meant being a party to the father, etc. being deprived of the possession of the girl, her willingness being immaterial (*R. v. Manktelow* 22 L.J.M.C. 115; *R. v. Timmins* 30 L.J.M.C. 45). See POSSESSION. But, *semble*, if all the persuasion came from the girl only, and a man going with her was merely passively yielding to her persuasion, he did not offend against the section (*per Jelf J.*, *R. v. Jarvis* 20 Cox C.C. 249).

(26) "Take" copies: see *Ormerod v. St. George's Ironworks* [1905] 1 Ch. 505, cited INSPECT.

(27) "Take" legal proceedings is to commence them: see *Re Martin* 35 S.J. 88, cited SOLICITOR.

(28) "Property . . . taken" (Finance Act 1894 (c. 30), s.2(1)(a)). Where, during his lifetime, the deceased executed a deed of trust to the value £5000 "or investments representing the same," and paid over that sum of money to the trustees' solicitors, the property "taken" was, for death duty purposes, valued at £5000 and not the much greater market value of the investments at the date of death (*Sneddon v. Lord Advocate* [1954] A.C. 257).

(29) "Take . . . such steps . . . as may be necessary for keeping . . . secure" (Mines and Quarries Act 1954 (c. 70) (s.48(1))). These words do not impose an absolute duty. If there is no expectation of danger there is no duty under this section (*Tomlinson v. Beckermat Mining Co.* [1964] 1 W.L.R. 1043).

"Take" a point of law: see RAISE.

"Taking the case as a whole," see AS A WHOLE.

See ACQUIRE; ACQUISITION OF LANDS; INHERIT; COMPULSORY POWERS; PURCHASE.

TAKE AND APPROPRIATE. The power to guardians "to take and appropriate" a pauper's property to "reimburse themselves" the expenses of his burial and 12 months' maintenance (s.16, Poor Law Amendment Act 1849 (c. 103)) only constituted them ordinary (not preferential) creditors, and their claim did not interfere with the right of the pauper's executor to retain in respect of his own claim (*Laver v. Botham* [1895] 1 Q.B. 59); nor did the power affect the common law right of the guardians to recover the property of the pauper (though lunatic or infant) expenses necessarily incurred for his benefit, the limit being six years (*Re Clabbon* [1904] 2 Ch. 465; *West Ham v. Pearson* 62 L.T. 638), such expenses included not only the cost of his boarding but also a reasonable proportion of establishment charges and things of that kind (see *Islington Guardians v. Biggenden* [1910] 1 K.B. 105; but see *Pontypridd Guardians v. Drew* [1927] 1 K.B. 214).

TAKE AND CARRY AWAY. See TAKE.

TAKE AND DRIVE AWAY. See DRIVE; TAKE.

TAKE AWAY. Not to “take away, or do business for,” A’s clients: see **CLIENT**.

See **LEAD AWAY**.

TAKE CARE. “Take care of and provide”: see **PRECATORY TRUST**.

TAKE DOWN. A house or building, or its front, was not “taken down in order to be rebuilt or altered” (s.155, Public Health Act 1875 (c. 55)), unless substantially the whole was removed; each case depended on its own circumstances, but a large structural alteration, involving the removal of no more than two-thirds of the house or building or front, was not a “taking down” within the section (*A.-G. v. Hatch* [1893] 3 Ch. 36). Cp. **NEW BUILDING**.

See **DEMOLISH**; **UNNECESSARY INCONVENIENCE**.

TAKE EFFECT. (1) A testator devised to his son in fee simple certain real estate, and proceeded: “These devises shall take effect upon my said son attaining the age of 25 years.” Held, that the devises vested at the testator’s death, subject to being divested on the death of the son under 25. “Their Lordships see no reason for doubting that the established rule for the guidance of the court in construing devises of real estate is that they are held to be vested unless a condition precedent to the vesting is expressed with reasonable clearness” (*Bickersteth v. Shanu* [1936] A.C. 290).

(2) Resignation of trustee “to take effect,” see *Fullarton’s Trustees v. James* 33 Sc. L.R. 136, cited **RESIGNATION**; **SUBSISTING**.

TAKE IN. See **AGIST**.

TAKE IN EXECUTION. (1) “The ordinary meaning of ‘taken in execution’ is that the goods have been seized by the sheriff; and, in ordinary language, a sheriff who has seized goods under a *fiери-facias* is said to have ‘taken them in execution,’ ” e.g. as the phrase was used in St. Marylebone Improvement Act 1794 (c. 73), s.195 (*per* Bigham J., *Marylebone Vestry v. Sheriff of London* [1900] 1 Q.B. 114; affirmed [1900] 2 Q.B. 591).

(2) The protection given to landlords by Landlord and Tenant Act 1709 (c. 18), s.1, that no goods should “be taken by virtue of any execution” until the rent was paid, only applied where the goods were removed or sold (*White v. Binstead* 22 L.J.C.P. 115; *Cocker v. Musgrave* 9 Q.B. 223); because that statute was “only intended to give a landlord a remedy when deprived of his rights by removal” (*per* Jervis C.J., *White v. Binstead* *sup.*; see further *per* Williams L.J., *Marlebone Vestry v. Sheriff of London* *sup.*).

See **EXECUTION**. Cp. **LEVY**. See *Cox v. Harper* [1910] 1 Ch. 480.

TAKE IN SATISFACTION. See *Re Cosier* [1897] 1 Ch. 325, cited **SATISFACTION**.

TAKE INTO ACCOUNT. (1) For the different senses in which the expression “to take into account” may be used, see *Metropolitan Water Board v. St. Marylebone* [1923] 1 K.B., at p. 99.

(2) “There shall be taken into account . . . rights” (Law Reform (Personal Injuries) Act 1948 (c. 41), s.2(1)); the court was entitled to take into account rights accruing after the period of disablement (*Stott v. Sir William Arrol & Co.* [1953] 2 Q.B. 92). “Taken into account” meant no more than that the court had to make as accurate a valuation as it could of the rights to be taken into account (*Flowers v. George Wimpey & Co.* [1956] 1 Q.B. 73).

TAKE ON. “Taking on work” (Defective Premises Act 1972 (c. 35), s.1(1)). A person takes on work, for the purposes of assuming the duty imposed by this Act to do a proper job, at the time it is arranged he should undertake it, or, at the least, at the date of commencement, and not that upon which it was completed (*Alexander v. Mercouris* [1979] 1 W.L.R. 1270).

TAKE ON BOARD. An obligation to “take on board” certain goods is more exigent than to “put on board,” and connotes that whatever care is required to be taken to ship the goods safely and securely must be taken by the obligor (*per* Cresswell J., *Cooke v. Wilson* 1 C.B.N.S. 163).

TAKE ON THEMSELVES. See *Re Stamford and Warrington* [1911] 1 Ch. 648, cited *RATIONE*, explaining and not adopting *dictum* of Cockburn C.J., in *Nutter v. Accrington* 4 Q.B.D. 375, cited *STREET*.

TAKE OR DEMAND. For a sheriff, etc., to “take or demand” more than his fees was punishable under s.29(2)(b), Sheriffs Act 1887 (c. 55); he would “take” such excess if he appropriated thereto the moneys already in his hands (*per* Fry L.J., *Woolford’s Trustee v. Levy* 61 L.J.Q.B. 551); to “demand” extortionately, he had, *semble*, to demand peremptorily or insistingly—merely asserting his right to such excess, *e.g.* by claiming it in an account which he offered to submit to taxation, was not making such a “demand” (*ibid.* [1892] 1 Q.B. 772). In that case, Kay J., expressed an opinion *obiter* that such “demand” only applied if money was extorted beforehand by the officer as a condition of his doing his duty, but that opinion was not approved by the Court of Appeal (*per* Fry and Lopes L.JJ., *Lee v. Dangar* [1892] 2 Q.B. 337).

See *EXTORTION*.

TAKE OR DESTROY. A penalty for “taking or destroying” the spawn of fish (*Bridger v. Richardson* 2 M. & S. 568), or for “taking or killing” fish (*R. v. Mallinson* 2 Burr. 679), means an improper taking, and not, *e.g.* removing spawn from one bed to another.

TAKE OR USE. See *TAKE*.

TAKE OVER. (1) Repair of a road until “taken over” by the local authority: see *Skinner v. Hunt* [1904] 2 K.B. 452, cited *REPAIR*; *Regent’s Canal & Docks Co. v. Gibbons* [1925] 1 K.B. 81.

(2) “Taken over the establishment” (Industrial Training Levy (Road Transport) Order 1967 (No. 1309), art. 3(4)). A company who leased an establishment for seven years, with the equipment and use of the trade name, came within the section as it is immaterial whether the take-over is permanent or temporary (*Road Transport Industry Training Board v. Brice and Price* (1968) 112 S.J. 801).

TAKE PART. (1) “Taken any part in the proceedings” (Supreme Court Costs Rules 1959, r. 22(3), now R.S.C., Ord. 62, r. 22(3)). A cited party who had not entered an appearance, but was present in court, and orally assented to an amendment to the respondent’s answer, and to dispensing with service of the amended answer on him, had “taken part” in the proceedings within this rule (*Roberts v. Roberts* [1965] 1 W.L.R. 643).

(2) “Take part or offer to take part in any arrangements” (Prevention of Fraud

(Investments) Act 1958 (c. 45), s.13(1)). A person can “take part” for the purposes of this section through other persons acting on his behalf (*Secretary of State for Trade v. Markus* [1976] A.C. 35).

(3) “Takes part in” (Representation of the People Act 1969 (c. 15), s.9(1)) means “actively participates in” and not “is shown or recorded in” (*Marshall v. British Broadcasting Corp.* [1979] 1 W.L.R. 1071).

(4) “Taking part in a strike” (Employment Protection (Consolidation) Act 1978 (c. 44), s.62(1)(b)). Where a workforce is called out on strike, those employees who were on leave at the time, and knew nothing about the strike were not “taking part in a strike” within the meaning of this section. The fact that it was their shop stewards organising the strike did not mean that they had assented or participated (*Dixon v. Wilson Walton Engineering* [1979] I.C.R. 438). An employee who intended to go to work but turned back through fear of being abused by pickets mounted by striking workmates was herself “taking part in a strike” within the meaning of this section (*Coates and Another v. Modern Methods and Material* [1982] W.L.R. 764). A worker who, while off sick during the entire period of a strike, spoke to the pickets at the gate could thereby be held to have been “taking part” in the strike, even though the employers were unaware of the fact that he had done so (*Hindle Gears Ltd. v. McGinty and Others* [1985] I.C.R. 111).

TAKE PLACE. The mere supply of liquor to a drunken person was held as not permitting drunkenness “to take place,” within s.13, Licensing Act 1872 (c. 94) (*per Surrey Sessions, Smith v. Eldridge* 48 J.P. 25); but see *Edmunds v. James* [1892] 1 Q.B. 18, cited **SUFFER**.

TAKE POSSESSION. “Take possession,” “take effect in possession”: see also **POSSESSION**.

TAKE UP. “Take up money at interest”: see **BORROW**.

Taking up a **RISK**: see *Byas v. Miller* 3 Com. Ca. 40.

TAKEN. See **TAKE**.

TAKEN FROM. “Taken from the ship’s tackle directly on their coming to hand”: see *The Coahoma County* [1904] P. 95, cited **TACKLE**.

TAKER. See **INHERITOR**.

TAKING-OFF. (Air Navigation Act 1920 (c. 80), s.9(1).) An aircraft turning before taxiing into position for its take-off is not “taking-off” within s.9(1) (*Blankley v. Godley* [1951] 1 All E.R. 436).

TAKINGS AT SEA. See **TAKE**.

TALE QUALE. See *Wieler v. Schilizzi* 25 L.J.C.P. 89, cited *Jones v. Just* L.R. 3 Q.B. 204, 205. See further *Commissioner of Public Works v. Logan* [1903] A.C. 363.

TALES. A “tales” is when the jury empanelled do not appear, or appearing, are challenged, “in this case the judge upon petition granteth a supply to be made by the sheriffe of some men there present equal in reputation to those that were

impanelled; and hereupon the very act of supplying is called a *tales de circumstantibus*" (Termes de la Ley).

See also *R. v. Solomon* (1958) 42 Cr. App. Rep. 9; CHALLENGE.

TALFOURD'S ACTS. (Custody of Infants Act 1839 (c. 54)); see Custody of Infants Act 1873 (c. 12).

Copyright Act 1842 (c. 45), which is sometimes called Earl Stanhope's Act.

TALLAGE. " 'Taxe, and tallage' are payments as tenths, fifteenes, subsidies, or such like, granted to the King by Parliament. The tenants in ancient demesne are quite of these taxes and tallages granted by Parliament, except that the King doe taxe ancient demesne, as he may when he thinkes good for some great cause" (Termes de la Ley, *Taxe and Tallage*; see further Cowel). But this exemption of tenants in ancient demesne does not extend to local taxation levied by authority of Parliament, *e.g.* county rate, poor rate, etc., for such taxation is not granted by Parliament to the Crown but is for the benefit of the particular locality (*R. v. Aylesford* 29 L.J.M.C. 83).

TALWOOD. " 'Talwood' is a term used in the Assize of Wood and Coals 1542 (c. 3), and Assizes of Fuel 1552 (c. 7) and of 1601 (c. 14), and it signifies such wood as is cut into short billets, for the sizing whereof those statutes were made" (Termes de la Ley).

TAMDIU. See QUAMDIU.

TANK. (1) Sched. III, Pt. 1 (xiv), Settled Land Act 1925 (c. 18): see *Re Harrington* 75 L.J. Ch. 460, cited RESERVOIR; *Re Dunraven's Settled Estates* [1907] 2 Ch. 417.

(2) "Tank" (Plant and Machinery (Valuation for Rating) Order 1927 (No. 480), Sched., class 4). An underground metal container resting on concrete cradles, surrounded by brick walls and with sand filling the space between the container and the walls, was a "tank" housed with a structure and was not part of a tank formed by the whole installation (*Shell-Mex and B.P. v. Holyoak* [1959] 1 W.L.R. 188).

TAPERING. " 'Tapering' means gradually converging to a point" (*per* Ellenborough C.J., *R. v. Metcalf* 2 Starkie, 250); therefore, it was held in that case that, if a patent is for a "tapering" brush and the specification shows that the bristles of the brush would be of unequal length not converging to a point, the patent is bad.

TARRY. See ELOPE.

TASTE. See VERTU.

TAUT. See TIGHT.

TAVERN. See ALEHOUSE; HOTEL; PUBLIC HOUSE.

TAVERN KEEPER. See *Lorden v. Brooke Hitching* [1927] 2 K.B. 237.

TAX. (1) "The tax which he ought to be charged under this Act" (Income Tax Act 1952 (c. 10), s.25(3)(a)) meant the whole tax chargeable for the relevant year (*I.R.C. v. Hinchy* [1960] A.C. 748).

(2) To “tax” a solicitor’s bill of costs is to deal *seriatim* with each item by way of allowance of disallowance; to “settle” it is finally to ascertain the amount recoverable (*per* Farwell J. [1906] 1 Ch. 124, *Re Grant*, cited BILL). See also TAXATION.

Stat. Def., Capital Allowances Act 1968 (c. 3), ss.87, 94; Taxes Management Act 1970 (c. 9), s.118; Income and Corporation Taxes Act 1970 (c. 10), s.526(3); Finance Act 1971 (c. 68), s.50; Finance Act 1972 (c. 41), s.82(9); Finance Act 1976 (c. 40), ss.57, 88, 122; Finance Act 1980 (48), Sched. 18, para. 23.

See TALLAGE; TAXES. Cp. IMPOST.

TAX ADVANTAGE. For discussions as to what were and were not considered “tax advantages” within the meaning of s.43(4)(g) of the Finance Act 1960 (c. 44), see *I.R.C. v. Parker* [1966] A.C. 141, and *Cleary v. I.R.C.* [1968] A.C. 766.

(Income and Corporation Taxes Act 1970 (c. 10), s.460), see TRANSACTION.

Stat. Def., Finance Act 1960 (c. 44), s.43(4); Income and Corporation Taxes Act 1970 (c. 10), s.446.

TAXABLE. (1) Actual value of a railway “taxable”: see *St. John v. Central Vermont Railway* 14 App. Ca. 590, cited VALUE.

TAXABLE SUPPLY. “Taxable supply” (Finance Act 1972 (c. 41), s.2(2)). Reimbursement of a solicitor’s out-of-pocket expenditure was part of the consideration which the client paid for the services supplied to him, and was therefore a “taxable supply” which must be brought into account for the purpose of determining the VAT chargeable (*Rowe & Maw v. Customs and Excise Commissioners* [1975] 1 W.L.R. 1291). The presentation of such articles as gold watches, clocks, canteens of cutlery, etc., to employees who completed twenty-five years’ service was a “taxable supply” chargeable to value added tax (*R.H.M. Bakeries (Northern) v. Commissioners of Customs and Excise* [1978] T.R. 261). The supply by the appellants of books, meters and sundry merchandise to persons taking courses provided by them was a “taxable supply” for VAT purposes (*Church of Scientology of California v. Commissioners of Customs and Excise* [1979] T.R. 59). The sale of stolen motor cycles or cars is a “taxable supply,” since the supply of goods for VAT purposes does not entail a valid contract; it means agreement by the supplier to supply, and the recipient to take possession, in the sense of control of the goods and the facility for their immediate use (*Customs and Excise Commissioners v. Oliver* [1980] 1 All E.R. 353). Goods supplied by a retail mail order company as an inducement to agents were “taxable supplies” within the meaning of ss.2(2), 46(1) of the 1972 Act, and not “gifts of goods” within the meaning of Sched. 3, para. 6 (*GUS Merchandise Corporation v. Customs and Excise Commissioners*, *The Times*, July 11, 1981. See also SUPPLY.

Stat. Def., Finance Act 1972 (c. 41), s.46(1); Value Added Tax Act 1983 (c. 55), s.2(2).

TAXATION. (1) For the meaning of “taxation” in a charterparty, see *City of Halifax v. Nova Scotia Car Works Ltd.* [1914] A.C. 992.

(2) (a) Taxation of costs as between solicitor and client distinguished from party and party costs: see *Giles v. Randall* [1915] 1 K.B. 290; *Re Lavey* [1921] 1 K.B. 344.

(b) “Taxation as between solicitor and client” denotes an inquiry as to the costs which a client ought properly to pay to his own solicitor (*Goodwin v. Storrar* [1947] K.B. 457).

(3) The word "taxation" has been held not to include municipal rates (*Orthodox Patriarchate of Jerusalem v. Municipal Corporation of Jerusalem* [1944] A.C. 1).

(4) (Finance Act 1936 (c. 34), s.18) did not include death duties (*Macdonald v. Inland Revenue Commissioners* [1940] 1 K.B. 802).

See DIRECT TAXATION; LOCAL TAXATION.

TAXED. "Taxed off" (Solicitors Act 1932 (c. 37), s.65) meant a reduction of the bill by the Taxing Master where the business involved was within the retainer, not where the client said "This is business with which I have no concern, it ought never to have been in the bill at all" (*Re Taxation of Costs, Re a Solicitor* [1936] 1 K.B. 523, at p. 532).

See CHARGED; RATED OR ASSESSED.

TAXED CART. See *Williams v. Lear* L.R. 7 Q.B. 285, dissenting from *Purdy v. Smith* 28 L.J.M.C. 150.

TAXED COSTS. (1) An agreement to pay a solicitor's "taxed costs," means, *prima facie*, that the costs must be taxed by one of the Masters of the High Court (*Morgan v. West* 14 L.J. Ex. 3).

(2) "Taxed costs of the petitioner" (Bankruptcy Rules 1886, r. 125) included the costs of a re-hearing of the petition and an appeal therefrom (*Re Bright* [1903] 1 K.B. 735).

See COSTS.

TAXES. (1) "When 'taxes' are generally spoken of—if the subject-matter will bear it—they shall be intended parliamentary taxes given to the Crown" (*per Holt C.J., Brewster v. Kidgill* 12 Mod. 167; see further *R. v. Aylesford* 29 L.T.M.C. 83, cited TALLAGE); and the word will include subsequent taxes of the same nature as those in being at the date of the document to be construed, but not those of a different nature (*Brewster v. Kidgill* *sup.*; *nom. Brewster v. Kitchin* 1 Raym. Ld. 317; see further Woodf. (24th ed.) 640 *et seq.*). See further *Sion College v. London* [1901] 1 K.B. 617, and *London v. Netherlands Steamboat Co.* [1906] A.C. 263, *inf.*; *Lindsay v. Bett* 35 Sc. L.R. 881; *per Palles C.B., Cork v. Cork County Council* [1903] 2 Ir. R. 497–501.

(2) The cases relating to covenants in leases for payment of taxes, rates, assessments, impositions, burdens, charges, duties and other outgoings, seem at first sight to run into one another; and it certainly needs a little care to harmonise them. Of course, as regards the ordinary public taxes and the ordinary parochial rates no difficulty of construction can well arise. Such payments would be covered by a covenant to pay taxes and rates. But there are a variety of things of a structural kind—*e.g.* the cost of abating a nuisance, or of paving the path in front of the tenement—which though primarily chargeable upon or payable by the landlord, may or may not be thrown upon the tenant, according to the more or less comprehensiveness of his covenant to pay the outgoings in respect of the property demised. It may perhaps be safely laid down that, where a case is not covered by authority, the growing tendency is not to throw exceptional burdens upon the tenant (especially where he holds at a rack-rent (see *per Jessel M.R., Allum v. Dickinson* 9 Q.B.D. 632)), unless he has entered into a clear covenant to bear such burdens. And it is also probably true to say that such burdens are neither taxes, nor rates, nor are they "assessments," when that word is used in collocation with "taxes" or "rates" (*Hartley v. Hudson* 4 C.P.D. 367; *Wilkinson v. Collyer* 13 Q.B.D. 1; *Tidswell v.*

Whitworth L.R. 2 C.P. 326); but see IMPOSITION. See further *Lumby v. Faupel* 30 L.T. 140.

(3) The practical corollary to the last proposition is that where a tenant's covenant only embraces "taxes, rates, and assessments," he will not be liable, thereupon, to pay for exceptional works the costs of which are, by the legislature, imposed on the landlord.

(4) But the tenant's covenant is frequently wider than this (containing, as they are sometimes called, words of indemnity), and it is then that difficulty arises. To solve a difficulty of this kind a somewhat close attention to the decided cases is needed. The leading case in favour of the landlord is *Thompson v. Lapworth*, whilst that for the tenant is *Tidswell v. Whitworth*. Both cases were decided by the same Court of C.P., consisting of Bovill C.J., and Willes, Keating, and Montague Smith JJ.—*Thompson v. Lapworth* being a few months later than *Tidswell v. Whitworth*. Both cases are dealt with *infra*.

CASES IN LANDLORD'S FAVOUR

(5) (a) Where a lessee covenanted to pay rent free from "all parliamentary parochial and other rates, assessments, deductions, or abatements," and also to pay "all taxes, rates, duties, levies, assessments, and payments whatsoever which then were, or during the term might be, rated, levied, assessed, or imposed, upon or payable in respect of" the demised premises, he was held not entitled to deduct from his rent a payment made by him to a local board for paving, which but for the terms of the lease he would have been entitled to deduct (*Payne v. Burrigge* 13 L.J. Ex. 190; see also *Sweet v. Seager* 2 C.B.N.S. 119, which case had the word "burdens"). So, where the reservation of rent was "clear of all deductions in respect of land-tax, sewers-rate, and all other taxes, rates, and deductions whatsoever," and the tenant covenanted to "pay and discharge all taxes, rates, duties, and assessments, whatsoever which during the continuance of this present demise shall be taxed, assessed, or imposed, on the tenant or landlord, of the premises hereby demised in respect thereof, whether parliamentary, parochial, or otherwise (except property or income-tax)"; held, that these words threw the cost of paving, under Metropolis Management Act 1855 (c. 120), s.105, and Metropolis Management Amendment Act 1862 (c. 102), ss.77 and 96, on the tenant (*Thompson v. Lapworth* L.R. 3 C.P. 149; *Wix v. Rutson* [1899] 1 Q.B. 474; *Farlow v. Stevenson* [1900] 1 Ch. 128); so of expense (under some statutes) of connecting house drains with sewer (*Clayton v. Smith* 11 T.L.R. 374).

(b) So, where the tenant covenanted to "bear pay and discharge" certain specified taxes and rates, "and all other taxes, rates, *duties*, and assessments, whatsoever, whether parliamentary, parochial, or otherwise, taxed, charged, rated, assessed, or imposed, upon the said demised premises or any part thereof *or upon the landlords or tenants* in respect thereof"; held, that the tenant was liable to pay the expense of abating a nuisance as directed by justices by an order obtained by a sanitary authority under s.96, Public Health Act 1875 (c. 55); see Public Health Act 1936 (c. 49), s.94 (*Budd v. Marshall* 5 C.P.D. 481; see further DUES); and a similar conclusion was reached where the covenant omitted the words italicised (*Brett v. Rogers* [1897] 1 Q.B. 525; see further IN RESPECT OF; *Antil v. Godwin* 63 J.P. 441, cited OUTGOING).

(c) So, where the tenant covenanted to pay "all rates, taxes, charges, and assessments, whatsoever which now are or may be charged or assessed upon the said premises or any part thereof, or upon any person or persons in respect thereof (land tax and property tax excepted)"; held, that the tenant was liable for the

expense of sewerage, levelling, paving, etc., a street, pursuant to s.69, Public Health Act 1848 (c. 63); (*Hartley v. Hudson* 4 C.P.D. 357; cp. *Rawlins v. Biggs* 47 L.J.C.P. 487, inf.), and so of the expense of remedying a nuisance arising from the drains of the house (*Smith v. Robinson* [1893] 2 Q.B. 53).

(d) So, where the tenant covenanted "to bear pay and discharge the sewers' rate, tithes, rent-charge in lieu of tithes, and all other taxes, rates, assessments, and 'outgoings' whatsoever, which at any time or times during the said demise should be taxed, rated, charged, assessed, or imposed, upon the said demised premises, or any part thereof, 'or upon the landlord or tenant' in respect thereof, or on the rent thereby reserved"; held, that the tenant was liable to pay for the expense of connecting his house-drain with the main sewer, pursuant to s.10, Sanitary Act 1866 (c. 90) (*Crosse v. Raw* L.R. 9 Ex. 209; see further OUTGOING). So, where the words were "impositions and outgoings," that covered structural works done under the Factory and Workshop Act 1891 (c. 75) (*Arding v. Economic Printing Co.* 79 L.T. 622).

See further *Waller v. Andrews* 7 L.J. Ex. 67, cited SCOT. See also IMPOSITION.

CASES IN TENANT'S FAVOUR

(6) (a) But where the tenant covenanted "to pay and discharge all taxes, rates, assessments, and impositions whatsoever (except property or income tax), 'payable' in respect of the demised premises"; held, that he was not liable to pay the expense of paving the street opposite his house, which, under the Manchester General Improvement Act 1851 (c. cxix), had been done by the Corporation, and charged to the landlord (*Tidswell v. Whitworth* L.R. 2 C.P. 326, on which case see *Farlow v. Stevenson* sup.). So, where the tenant covenanted to pay "all and all manner of taxes, rates, 'charges,' assessments, and impositions, whatsoever (except land tax and landlord's property tax), at any time during the said term to be charged, assessed, or imposed, on the said premises thereby demised, or in respect thereof or of the said rent as aforesaid by authority of Parliament, or otherwise howsoever"; held, that he was not liable for the expense of abating a nuisance on the premises under the Public Health Act 1875 (c. 55) (see Public Health Act 1936 (c. 49), s.94(3)) (*Rawlins v. Biggs* 47 L.J.C.P. 487); and so of a like expense where the tenant covenanted to pay "all rates, taxes, and assessments whatsoever, which now are or during the said term shall be imposed or assessed upon the said premises, 'or the landlord or tenant' in respect thereof, by authority of Parliament or otherwise (except the landlord's property tax)" (*Lyon v. Greenhow* 8 T.L.R. 457). So, where (as in *Thompson v. Lapworth* sup.), a liability for the cost of paving, under the Metropolis Local Management Acts, was sought to be thrown on the tenant, the following words of his covenant were held insufficient for that purpose—to pay "the sewers and main drainage rates and other district rates and assessments whatsoever, whether parliamentary, parochial, or otherwise, which now are or which at any time during the said term shall be taxed, rated, charged, assessed, or imposed, upon the said demised premises or any part thereof, or upon or payable 'by the occupier or tenant' in respect thereof" (*Allum v. Dickinson* 9 Q.B.D. 632). And a like ruling, in reference to the same statutes and in respect of a similar cost, was arrived at where the tenant covenanted to pay "all rates, taxes, and assessments, payable in respect of the premises during the tenancy (except land tax and landlord's property tax)" (*Wilkinson v. Collyer* 13 Q.B.D. 1; *Baylis v. Jiggins* [1898] 2 Q.B. 315). See further *Lumby v. Faupel* sup. See ASSESSED; CHARGED; IMPOSED; RATED OR ASSESSED; EXPENSES.

(b) It will be observed that the covenant in *Payne v. Burrridge*, *Thompson v. Lap-*

worth, *Budd v. Marshall*, and *Brett v. Rogers* threw on the tenant the burden of paying all “duties”; and the comprehensiveness of that word is especially pointed out in the judgments of Bramwell and Baggallay L.JJ., in *Budd v. Marshall*. In *Hartley v. Hudson* the tenant covenanted to pay all “charges”; whilst in *Crosse v. Raw and Arding v. Economic Printing Co.* there was the still more comprehensive word “outgoings.”

(c) On the other hand, in the cases (except *Tidswell v. Whitworth* and *Rawlins v. Biggs*) where the tenant escaped, the covenant did not go beyond “rates, taxes, and assessments” (as the controlling words), and exceptional payments of the kind under discussion are not comprised in either term of that phrase. As to *Tidswell v. Whitworth*, see IMPOSITION.

(d) Besides, in some of the landlord cases, the words of the tenant’s covenants provided for the payment by him of the obligations, *whether charged on the landlord or tenant*; whilst in the tenant’s cases (except *Baylis v. Jiggins* and *Lyon v. Greenhow*) the covenant was either silent as to this, or only embraced such obligations as were “payable by the occupier or tenant.” The importance of this distinction is pointed out by Lindley J., in *Hartley v. Hudson*; but in *Baylis v. Jiggins* (sup.) Channell J., referred to this distinction as a dictum only, and refused to hold the tenant liable though the words there were “rates, taxes, and assessments . . . which shall be imposed or assessed upon the premises, *or the landlord or tenant in respect thereof*, by authority of Parliament or otherwise”; see also *Lyon v. Greenhow* sup. Indeed, it is difficult to see how such merely adjectival phrases as those just italicised can enlarge the essential meaning of the substantive words to which they are added so as to vary the meaning of those words.

(e) It remains to notice *Rawlins v. Biggs* 3 C.P.D. 368 (one of the tenant’s cases). *Hartley v. Hudson* 4 C.P.D. 367, shows that such an exceptional payment as now under discussion is a “charge,” and it seems a little difficult to see how the learned judge who decided *Hartley v. Hudson* was able to say in *Rawlins v. Biggs* that it was not “charged, assessed, or imposed on the premises thereby demised, ‘or in respect thereof.’ ”

(f) The shortness of the tenancy, *e.g.* a tenancy from year to year, and a great disproportion between the rent and the structural charge, have been held to be circumstances (in the tenant’s favour) showing that not even so wide a word as “outgoings” will include the structural charge (*Valpy v. St. Leonard’s Wharf Co.* 67 J.P. 402; *Harris v. Hickman* [1904] 1 K.B. 13); but those cases have been doubted (48 S.J. 190); and, *semble*, the true rule is that to justify such a departure from the meaning of such a phrase, the circumstances ought to show that to apply that meaning “would be an outrage on common sense” (*per* Wright J., *Stockdale v. Ascherberg* [1903] 1 K.B. 873; see also *Re Warriner* [1903] 2 Ch. 367, cited IMPOSITION), *e.g.* “such an extreme case as that of an obligation to pull down and rebuild the premises” (*per* Collins M.R., *Foulger v. Arding* [1902] 1 K.B. 707); this last case was followed in *Lowther v. Clifford* [1927] 1 K.B. 130. Under Public Health Act 1875 (c. 55), it was the date when the structural works were completed that their cost became a charge on the premises (see CHARGE; OWNER); and the lessee could not be liable, under such covenants as above considered, if the work had been completed and the assessment therefor had become an effective charge on the premises prior to the date of the lease (*Surtees v. Woodhouse* [1903] 1 K.B. 396, cited OUTGOING). Under the Metropolis Management Acts or Public Health London Act 1891 (c. 76), premises became charged with their proportion of such cost when the apportionment of the cost was made (see CHARGE).

(7) As to when a testamentary direction to pay income free of taxes will include

income tax, see DEDUCTION; 3 Jarm. (8th ed.) 1806 *et seq.* Such a direction included legacy duty (*Louch v. Peters* 3 L.J. Ch. 167, cited OUTGOING). As to exemption from apportionment of estate duty, see *Fitzhardinge v. Jenkinson* 80 L.T. 376, cited DEDUCTION.

(8) A direction in a will to make deductions from the income of a tenant for life for "taxes or otherwise," included the cost of drainage works under s.73, Metropolis Management Act 1855 (c. 120) (*Re Crawley, Acton v. Crawley* 28 Ch. D. 431). See further *Re Smith* [1906] 1 Ch. 799, cited ORDINARY OUTGOINGS.

(9) "Rates, taxes, and deductions," in respect of a statutory sum in lieu of tithes: see *Chatfield v. Ruston* 3 B. & C. 863, cited OUTGOING.

(10) The provision of s.51, Thames Embankment Act 1767 (c. 37), that the ground reclaimed from the river Thames under that Act should vest in the owners therein mentioned "free from all taxes and assessments whatsoever," applied only to taxes and assessments in existence at the time of the passing of that Act or their substitutes, and did not apply to the rate under the City of London Sewers Act 1848 (c. clxiii), inasmuch as the provisions of that Act showed that that rate was substantially a new rate and was not in existence at the time of the passing of the Thames Embankment Act (*Sion College v. London* [1901] 1 K.B. 617); but that ruling did not apply to "free and exempt from the payment of all and 'all manner' of rates and assessments" in s.5 (52 Geo. 3, c. 49), because that Act, and its supplement (2 & 3 Will. 4, c. 66), contemplated (what had happened) that Crown lands or their equivalent (not liable to rates at all) would get into the hands of private purchasers who would pay a higher price because the lands were rate-free and who had to make perpetual payments in lieu of rates, and therefore the immunity from "all manner" of rates was perpetual (*London v. Netherlands Steam Boat Co.* [1906] A.C. 263).

TAXIMETER. Stat. Def., Local Government (Miscellaneous Provisions) Act 1976 (c. 57), s.80.

TAYLOR'S ACT. Michael Angelo Taylor's Act is 57 Geo. 3, c. xxix; see thereon *Gard v. Commissioners of Sewers* 28 Ch. D. 486; *Summers v. Holborn* [1893] 1 Q.B. 612; *Wyatt v. Gems* [1893] 2 Q.B. 225; *Keep v. St. Mary, Newington* [1894] 2 Q.B. 524. *Gard v. Commissioners of Sewers* sup., was followed in *Lynch v. Commissioners of Sewers* 32 Ch. D. 72, and in *Denman v. Westminster* [1906] 1 Ch. 464; see further *Gordon v. St. Mary Abbots* [1894] 2 Q.B. 742, and *Gibbon v. Paddington* [1900] 2 Ch. 794, both cited PART; *Winsborrow v. London Joint Stock Bank* 88 L.T. 803, cited HANG; *Wild v. Woolwich* [1910] 1 Ch. 36, cited TREAT.

See OBSTRUCT.

TEA. Tea dealer: see *Fitz v. Iles* [1893] 1 Ch. 77, cited COFFEE-HOUSE.

Tea kettle: see *Hunt v. Berkeley Moseley* 47, cited APPURTENANCES.

See GREEN TEA.

TEACH AND INSTRUCT. In the case of an outdoor apprenticeship there is an implication that the master is to perform his covenant "to teach and instruct" at the place where he and his apprentice and the latter's parent resided at the date of the deed (*Eaton v. Western* 9 Q.B.D. 636, overruling *Royce v. Charlton* 8 Q.B.D. 1); but it would seem there would be no such implication in an indoor apprenticeship (*Eaton v. Western* sup.).

TEAME. see **THEME.**

Team of land: see **QUADRUGATA TERRÆ.**

TEAM-WORK. A lessee's covenant, in an agricultural lease, to provide "team-work," extends to other than agricultural work, *e.g.* hauling coals; but it does not oblige the lessee to find a cart, plough, or other machine, that may be necessary for the performance of the work (*Marlborough v. Osborn* 33 L.J.Q.B. 148).

TEAR; TEARING. (1) A will may be revoked by "tearing" it (s.20, Wills Act 1837 (c. 26)), a word which includes "cutting." The "tearing," or "cutting," need not be of the whole will; tearing or cutting off its principal part, *e.g.* either of the necessary signatures (*Hobbs v. Knight* 1 Curt. 768), or even the seal, when it has been executed under seal (*Price v. Powell* 3 H. & N. 341), is sufficient (1 Jarm. (8th ed.) 161); but it is doubtful whether tearing in a fit of anger is a revocation, if the testator afterwards puts the pieces together as well as he can (*Re Colberg* 2 Curt. 832), *semble*, such a tearing as that referred to in *Re Colberg* is not a revocation (*Re Brassington* [1902] P. 1). See also *Re Mackenzie* [1909] P. 305; *Re Cowling* [1924] P. 113; and if the tearing is only partial and (with the assent of the testator) is arrested before the material part of the will is injured, there is no such tearing as will work revocation (*Doe d. Perkes v. Perkes* 3 B. & Ald. 489). "Cutting out a particular clause, or the name of a legatee, is a revocation *pro tanto* only" (1 Jarm. (8th ed.) 162). See hereon *Mills v. Millward* 15 P.D. 20. See also *Gill v. Gill* [1909] P. 157, cited **DESTROY.**

(2) Erasing the signature with a knife is a "tearing" that revokes (*Re Morton* 12 P.D. 141); but would that be so if the erasure were made with a pen?

(3) A tearing burning or destroying, effective to revoke, must be made by the testator or by his authority (*Re Leigh* [1892] P. 82; *Mills v. Millward* sup.; *Margary v. Robinson* 12 P.D. 8, cited **REVOKE.**)

See **WEAR AND TEAR; DESTROY; CANCEL; BURN.**

TECHNICAL. " 'Technical work' is . . . a phrase of substantially wider import than 'scientific work.' No doubt all scientific work may be said to be 'technical,' but the converse by no means necessarily applies" (*per Jenkins J.*, in *Battersea Borough Council v. British Iron and Steel Research Association* [1949] 1 K.B. 434).

TECHNICALITY. See **EQUITY; FORMAL.**

TEINDS. "Court of teinds": United Parishes (Scotland) Act 1876 (c. 11), s.2.

See **FISH TEINDS.**

TELECOMMUNICATION. The Post Office Act 1969 (c. 48), s.24(1) gives the Post Office exclusive privilege with respect to telecommunication and defines in detail the area of this privilege.

TELEGRAPH. (1) "Telegraph" (Telegraph Acts 1863 (c. 112), s.3 and 1868 (c. 73), s.3; Post Office Protection Act 1884 (c. 76), s.11) included a telephone (*A.-G. v. Edison Telephone Co.* 6 Q.B.D. 244). "The result of the definition seems to be that, any apparatus for transmitting messages by electric signals is a telegraph, whether a wire is used or not, and that any apparatus of which a wire used for telegraphic communication is an essential part, is a telegraph, whether the communication is made by electricity or not. It would include, on the one hand, electric

signals made, if such a thing were possible, from place to place, through the earth or the air; and, on the other hand, a set of common bells worked by wires pulled by the hand, if they were so arranged as to constitute a code of signals. . . . The various affidavits filed give a complete history of the word 'telegraph,' and show that, from the first invention of semaphores till within the last few years, no contrivance of the sort did literally write at a distance, but that the word was applied to a variety of contrivances which, by signals perceptible sometimes by the sense of sight and sometimes by the sense of hearing, conveyed intelligence to great distances in a much shorter time than a letter could be carried" (*per* Stephen J., delivering the judgment, *ibid.* 6 Q.B.D. 249). See also *Swansea v. National Telephone Co.* 74 L.J. Ch. 449; *Postmaster-General v. National Telephone Co.* [1905] 2 Ch. 172, cited PRIVATE USE. So, lines of "telegraphs," in s.92(10)(a), British North America Act 1867 (c. 3), included telephones (*Toronto v. Bell Telephone Co.* [1905] A.C. 52, cited LOCAL WORKS, disapproving *R. v. Mohr* 7 Quebec L.R. 183).

(2) "Telegraphs" includes broadcasting (*Re Radio Communication in Canada* [1932] A.C. 304).

(3) "Telegraph line," in s.8, Telegraph Act 1878 (c. 76): see *Postmaster-General v. Beck and Pollitzer* [1924] 2 K.B. 308.

Stat. Def., British Telecommunications Act 1981 (c. 38), s.80.

Telegraph post: see POST.

See WIRELESS.

TELEGRAPHIC AUTHORITY. When a shipbroker signs a charterparty as agent for a named principal "by telegraphic authority," it is well understood in the trade that he negatives an implication of a warranty of the extent of his authority further than warranting that he has had a telegram which, if correct, authorises such a charter as that which he is signing (*Lilly v. Smales* [1892] 1 Q.B. 456).

TELEPHONE. See MESSAGE; TELEGRAPH; TRANSMIT.

TELEVISION. "Television dealer," "television set." Stat. Def., Wireless Telegraphy Act 1967 (c. 72), s.6(1).

TEMPERANCE. Temperance hotel: see INN.

TEMPERATE. See SOBER AND TEMPERATE HABITS; STRICTLY TEMPERATE.

TEMPEST. "Damage by tempest": see WEAR AND TEAR.

TEMPESTIVE. See PRECARIO.

TEMPORAL. (1) "'Law temporall.' Which consisteth of three parts, viz.: First, on the common law, expressed in our bookes of law, and judiciall records. Secondly, on statutes contained in acts and records of parliament. And thirdly, on customes grounded upon reason, and used time out of minde; and the construction and determination of these doe belong to the judges of the realme" (Co. Litt. 344 a). Cp. "law spiritual," under SPIRITUAL.

(2) "Temporal estate" is synonymous with worldly estate. See further *Tanner v. Wise* 3 P. Wms. 295; *Grayson v. Atkinson* 1 Wils. 333, which last case is commented on 2 Jarm. (8th ed.) 970. These cases show that a devise of all testator's "temporal estate" or "worldly estate" would, even before s.28, Wills Act 1837 (c. 26) pass the FEE SIMPLE.

(3) A testamentary gift of “temporal effects,” held to include realty (*Re Sheridan* 17 L.R. Ir. 179).

Corporation temporal: see CORPORATION.

TEMPORALITY. (1) “Temporalities of bishops, *temporalia episcoporum*, be such revenues lands and tenements, and lay fees, as have been laid to bishops sees by kings and other great personages of this land from time to time, as they are barons and lords of the Parliament” (Cowel).

(2) Bishops Resignation Act 1869 (c. 111), s.14, “ ‘temporalities’ shall include all real and personal property held by any archbishop or bishop, as such, and all fees and emoluments receivable by him by virtue of his office: ‘spiritualities’ shall include all episcopal and other jurisdiction, of whatever description, exerciseable by an archbishop or bishop.”

See SPIRITUALITY.

TEMPORARILY. (1) Works executing for “temporarily” meeting the circumstances created by war damage (War Damage Act 1943 (c. 21), s.6(2)). “Temporarily” meant that the works executed were to be superseded by permanent works (*Re St. Luke’s Hospital, Chelsea* [1949] Ch. 459).

(2) “Temporarily resident” (the old R.S.C., Ord. 65, r. 6A): see *Jelic v. Co-operative Press* [1947] 2 All E.R. 767. See also TEMPORARY.

(3) “Temporarily used” (Building Regulations 1926 (No. 738), reg. 15) meant available for use, as well as actually in use (*Field v. Perry’s (Ealing)* [1950] 2 All E.R. 521).

(4) The test for deciding whether a goods trailer is only “temporarily in Great Britain” within Sched. 2, class 27 of the Goods Vehicles (Plating and Testing) Regulations 1968 (No. 601) is whether its presence is of an occasional nature, and a trailer used regularly to transport goods from Great Britain to the Continent is not “temporarily” in Great Britain (*British Road Services v. Wurzel* [1971] 1 W.L.R. 1508).

(5) A student who comes to Great Britain for a course of study of some years’ length is not a “person temporarily in Great Britain” for the purposes of art. 2(1) of the Motor Vehicles (International Circulation) Order 1975 (No. 1208), even though his stay might be subject to such uncertainties as the availability of a grant (*Flores v. Scott* [1984] 1 W.L.R. 690).

TEMPORARY. (1) A temporary nuisance gives a reversioner no cause of action: see hereon *Mumford v. Oxford, etc., Railway* 25 L.J. Ex. 265; *Mott v. Shoolbred* L.R. 20 Eq. 22; *Jones v. Chappell* L.R. 20 Eq. 539; *Cooper v. Crabtree* 20 Ch. D. 589.

(2) A person was a temporary resident in the United Kingdom for the purposes of the National Service Act 1948 (c. 64), s.34(4), if paying a visit, for social or business reasons, and merely making a short stay. An Irishman working in the United Kingdom was not a temporary resident (*Bickness v. Brosnan* [1953] 2 Q.B. 77).

(3) As regards an artificial right—e.g. to an artificial watercourse—claimed by prescription, you “have to consider whether the artificial watercourse had been made for a temporary purpose or not. *Arkwright v. Gell* (8 L.J. Ex. 201, cited *Right*) was a case of water pumped from mines and flowing over another man’s land. That had gone on for over 60 years. ‘Temporary,’ therefore, does not mean merely that a thing happens to last in fact for only a few years, but it means that the

thing may, within the reasonable contemplation of the parties, come to an end some day; and is not meant to be equivalent to a grant in fee. For example, if a man pump water from his mines, for the purpose of draining them, that is 'temporary' in the sense that it is limited by the working of the mines. If a man make through his own land a duct leading water to his millpond for the use of his own mill, that is 'temporary,' in the sense that it is limited to the period for which he uses the mill. In each case, it is not meant to be a new formation, an alteration of the face of nature, to remain *in perpetuum*, but it is an alteration 'temporary,' in the sense that it is for the purpose of, and co-extensive with, the carrying on of a particular business" (*per* Farwell J., *Burrows v. Lang* [1901] 2 Ch. 508). See further WATERCOURSE. See further LIGHT; RIGHT; *Schwann v. Cotton* [1916] 2 Ch. 459.

(4) Temporary structure: see *Westminster Council v. London County Council* [1902] 1 K.B. 326, cited STRUCTURE. Temporary building, under s.27, Public Health Amendment Act 1907 (c. 53): see *Andrews v. Wirral Rural Council* [1916] 1 K.B. 863, cited NEW BUILDING; *Rodwell v. Wade* 23 L.G.R. 174.

(5) "Temporary cessations of work" (Contracts of Employment Act 1963 (c. 49) Sched. 1, para. 5(1)(b), now Employment Protection (Consolidation) Act 1978 (c. 44), Sched. 13, para. 9(1)(b)). What is "temporary" is a question of fact for the Tribunal (*Hunter v. Smiths Dock Co.* [1968] 1 W.L.R. 1865; *Fitzgerald v. Hall, Russell & Co.* [1969] 3 W.L.R. 868; *Thompson v. Bristol Channel Ship Repairers and Engineers* (1970) 8 K.I.R. 687). Where an employee who had been on strike was told, on re-presenting himself for work, that he had been dismissed but could apply to be taken on again, and, on doing so, was not re-engaged for a further week, there had only been a "temporary cessation of work" (*Clarke Chapman-John Thompson v. Walters* [1972] 1 W.L.R. 378). Where an employee has been dismissed for redundancy and subsequently re-engaged, the fact that he was on strike during the period of dismissal will not prevent that period being a "temporary cessation of work" (*McGorry v. Earls Court Stand Fitting Co.* [1973] I.C.R. 100). An absence from work due to a temporary cessation of the work appropriate to the employee, as opposed to a refusal to work, was held to be a "temporary cessation" (*Kolatsis v. Rockware Glass* [1974] I.C.R. 580). In deciding whether cessation of employment is "temporary" an industrial tribunal should properly consider the lengths of periods of employment before and after such cessation (*Bentley Engineering v. Crown* [1976] I.C.R. 225, cited under CONTINUOUSLY, q.v.). Where a "supply" schoolteacher had a contract which terminated automatically at the start of each school holiday, and which had, for a period of ten years, been renewed at the beginning of each term, the holidays were held to be more than "temporary" cessations of work (*Rashid v. Inner London Education Authority* [1977] I.C.R. 157). But this case was held to be wrongly decided in *Ford v. Warwickshire County Council* ([1983] 2 W.L.R. 399) where it was held that a teacher employed for eight years under a succession of fixed term contracts was, during the annual summer vacation, between the expiry of one contract and the commencement of the next, "absent . . . on account of a temporary cessation of work" within the meaning of the paragraph. "Work" means paid work. So that there was a "temporary cessation of work" within the meaning of this paragraph during the period a university lecturer, although her contract had not yet been renewed, spent preparing for the next academic year (*University of Aston in Birmingham v. Malik* [1984] I.C.R. 492). See also ABSENT; CESSATION; CONTINUOUSLY.

(6) "Temporary platform" (Building (Safety, Health and Welfare) Regulations 1948 (No. 1145), reg. 24(5)) refers to a platform erected temporarily for a particular purpose, and does not apply to a fixed structure, part of a building, which is

being used as a working place for the time being (*Wescott v. Structural and Marine Engineers* [1960] 1 W.L.R. 349).

(7) "Temporary circumstance" (Highways Act 1959 (c. 25), s.110). The test as to whether an unlawful obstruction is a "temporary circumstance" within the meaning of this section is whether it is likely to endure or be removed, and it was held that an electricity sub-station, a pine tree and a laurel hedge, on or abutting a path, were "temporary circumstances" in that legal steps could be taken to remove them (*R. v. Secretary of State for the Environment, ex p. Stewart* (1979) 39 P. & C.R. 534).

Cp. PERMANENT; TERMINATING.

TENANCY. (1) "Comprised in a contract of tenancy" (Agricultural Holdings Act 1948 (c. 63), s.1(1)) are apt to cover the whole of what is demised (*Howkins v. Jardine* [1951] 1 K.B. 614).

(2) The expression "tenancy from year to year" in s.2(1) of the Agricultural Holdings Act 1948 (c. 63) means a tenancy which creates an interest which has the invariable characteristics common to all tenancies from year to year at common law (*Gladstone v. Bower* [1960] 2 Q.B. 384).

(3) "Tenancy or successive tenancies" (Landlord and Tenant Act 1954 (c. 56), s.30(2)) refers to the interest of the tenant and does not include the interest of the landlord (*Artemion v. Procopion* [1966] 1 Q.B. 878).

(4) "Tenancy" (Landlord and Tenant Act 1954 (c. 56), s.69(1)) does not cover a tenancy at will arising by implication of law (*Wheeler v. Mercer* [1957] A.C. 416).

(5) "Tenancy" unqualified by any adjective, where it appears in s.20 of the Rent Act 1965 (c. 49) or elsewhere in that Act, means a contractual as opposed to a statutory tenancy (*Brown v. Conway* [1968] 1 Q.B. 222).

(6) "Tenancy" (Rent Act 1968 (c. 23), s.1). Occupancy of a bed-sitting room was held not to be a "tenancy" for the purposes of this section, and the occupant, as merely a contractual licensee, was therefore unprotected (*Marchant v. Charters* [1977] 1 W.L.R. 1181). Where residential accommodation was granted with exclusive possession for a term at a rent, the landlord providing neither attendance nor services, the result was a tenancy for the purposes of the Rent Acts, even though the agreement was called a licence and the occupier had signed a declaration that it did not give a tenancy protected by these Acts (*Street v. Mountford* [1985] 2 W.L.R. 877).

Stat. Def., Housing Act 1974 (c. 44), s.122; Sex Discrimination Act 1975 (c. 65), s.31; Rent (Agriculture) Act 1976 (c. 80), s.34; Rent Act 1977 (c. 42), s.152; Matrimonial Homes and Property Act 1981 (c. 24), Sched. 2, para. 10; Matrimonial Homes Act 1983 (c. 19), Sched. 1, para. 10; Finance Act 1983 (c. 28), s.21(11).

See FUTURE; JOINT TENANCY; ORDINARY TENANCY; PRESENT; STATUTORY; TENANT IN COMMON; YEAR TO YEAR. SEE CONTRACT OF TENANCY.

TENANCY IN COMMON. See TENANT IN COMMON.

TENANT. (1) In its feudal acceptation, "tenant" has five significations: it signifies (1) the estate held; (2) the tenure of the land; (3) performance of the obligations; (4) to be bound; and (5) "to deeme or judge" (Co. Litt. 1 a. b; see further 2 Bl. Com., ch. 5).

(2) These significations remained as regards copyhold land, and, to some extent, in the familiar relationship of landlord and tenant; but "tenant" has come to mean, in its primary signification, ownership, one who holds or owns realty, and in that sense the word is usually associated with other words denoting the quality of the

ownership, *e.g.* tenant in fee simple, tenant in tail, tenant for life, tenant for years, tenant *pur autre vie*, *terre tenant*; vassal.

(3) In the ordinary relationship of landlord and tenant, “a tenant is a person who holds of another; he does not, necessarily, occupy. In order to occupy, a party must be personally resident by himself or his family” (*per* Littledale J., *R. v. Ditchheat* 9 B. & C. 183); but see as to the latter sentence, OCCUPATION. Cp. LESSEE. See hereon *Lundie v. Falkirk Magistrates* 28 Sc. L.R. 72, cited DEALER.

(4) The expression “tenant” does not negative agency (*Danziger v. Thompson* [1944] 1 K.B. 654).

(5) “Lessees and sub-lessees, or tenants”: see *Keith v. Twentieth Century Club* 73 L.J. Ch. 549, cited FRIEND.

(6) The assignee of a lessee (*Doe d. Whitfield v. Roe* 3 Taunt. 402; *Williams v. Bosanquet* 1 Brod. & B. 238), or a sub-lessee (*Doe d. Wyatt v. Byron* 14 L.J.C.P. 207), was a “tenant” within s.210, Common Law Procedure Act 1852 (c. 76), and the decision of Erle J., in that case was followed in *Moore v. Snee* [1907] 2 K.B. 8; and so of ss.172, 173, *ibid.*; see hereon LANDLORD.

(7) (a) (Agricultural Holdings Act 1833 (c. 61).) In ss.1–28, and s.57, “tenant” meant “a tenant claiming compensation under this Act” (*per* Smith L.J., *Newby v. Eckersley* [1899] 1 Q.B. 465), and although s.57 said that a tenant should not claim “OTHERWISE than in manner authorised by this Act,” that only related to a claim made under the Act, and not where the claim was based on an outside agreement (*ibid.* [1899] 1 Q.B. 465; *Re Pearson and I’Anson* [1899] 2 Q.B. 618).

(b) Agricultural Holdings Act 1923 (c. 9), s.57(1)) did not include a bank which under the Agricultural Credits Act 1928 (c. 43) had taken a charge on “farming stock and other agricultural assets” (*Ecclesiastical Commissioners for England v. National Provincial Bank Ltd.* [1935] 1 K.B. 566). See now Agricultural Holdings Act 1948 (c. 63), s.94. Cp. LANDLORD.

(c) (Agricultural Holdings Act 1923 (sup.), s.12(1)—see now Agricultural Holdings Act 1948 (sup.), s.34(1).) A tenant who quits in consequence of a notice to quit under s.12(1) is a “tenant” for the purposes of the section (*Preston v. Norfolk County Council* [1947] K.B. 775).

(d) (Agricultural Holdings Act 1948 (sup.), s.24(1).) “Tenant” in s.24(1) does not include sub-tenant (*Sherwood (Baron) v. Moody* [1952] 1 T.L.R. 450).

(e) “Tenant with whom the contract of tenancy was made” (Agricultural Holdings Act 1948 (c. 63), s.24(2)(g)) means just that, and cannot extend to an assignee even although the assignment was made with the landlord’s consent (*Clarke v. Hall* [1961] 2 Q.B. 331).

(8) (a) To occupy “as tenant,” within the Acts conferring the parliamentary franchise, involves the idea of some permanent occupation, (*e.g.* a market stall, *Hall v. Metcalfe*, cited OCCUPATION) and independent interest, and “excludes some occupations of less independence, such as of servants for their service, *e.g.* the porter to a lodge, the gardener at a dwelling in the garden, and also such as that of a surgeon to a hospital of rooms therein (*Dobson v. Jones* 13 L.J.C.P. 126), also the occupation of premises by objects of a charity, occupying under the permission of the trustees of the charity as in *Heartley v. Banks* (28 L.J.C.P. 144), and *Davis v. Waddington* (14 L.J.C.P. 45)” (*per* Erle C.J., *Cook v. Humber* 31 L.J.C.P. 77). See further *Rogers v. Harvey* 28 L.J.C.P. 17; *Smith v. Seghill* L.R. 10 Q.B. 422; *Hughes v. Chatham* 13 L.J.C.P. 44; *Bridgewater v. Durant* 11 C.B.N.S. 7; *Fryer v. Bodenham* L.R. 4 C.P. 529; *Durant v. Carter* L.R. 9 C.P. 261, see on this last case *Rowland v. Pritchard* 62 L.J.Q.B. 319; *Ford v. Pye* L.R. 9 C.P. 269. But see SERVICE. See also *Riddall v. Mullan* [1903] 2 Ir. R. 417.

(b) The mere fact of a man living with his wife in a house owned by her is not sufficient to show, as regards parliamentary franchise, that he occupied “as tenant” to her (*Hall v. Micheltore* 86 L.T. 17); *secus*, if he bargained with her to be her tenant and paid her the agreed rent (*Pearce v. Merriman* [1904] 1 K.B. 80). See **SERVE; SEPARATELY.**

(c) Bankruptcy does not deprive a tenant of his status of occupation “as tenant,” as regards the franchise, if in fact his occupation goes on undisturbedly and he continues paying the rent as before (*Mackay v. McGuire* [1891] 1 Q.B. 250).

(9) (a) In the Increase of Rent and Mortgage Interest (Restrictions) Act 1920 (c. 17), “‘tenant’ is used in as special sense and as including an ex-tenant” (*per* Bankes L.J., in *Remon v. City of London Real Property Co.* [1921] 1 K.B. at p. 49). See also *Shuter v. Hersh* [1922] 1 K.B. 438; *Wolff v. Smith* [1923] 2 Ch. 393; *Collins v. Flower* [1921] 1 K.B. 409; *Lloyd v. Cook* [1929] 1 K.B. 103; and *Kingsley v. Adler* [1929] 1 K.B. 525, both cited **LANDLORD.**

(b) In s.5(1)(f) of the Act (as substituted by s.4 of Rent and Mortgage Interest Restrictions Act 1923 (c. 32)), “tenant” was not limited to an individual tenant, but included all those persons who usually and properly resided with him, including lodgers: see *Chiverton v. Ede* [1921] 2 K.B. 30, cited **REASONABLY SUFFICIENT.** But tenant in s.5(5) of the Act did not include a sub-tenant, though it did so in most of the Act; see *Hylton v. Heal* [1921] 1 K.B. 438.

(c) A tenant whose trustee in bankruptcy had disclaimed the tenancy was not protected by the Act: see *Reeves v. Davies* [1921] 2 K.B. 486; *Parkinson v. Noel* [1923] 1 K.B. 117.

(d) But a servant who had possession of a dwelling-house belonging to his employer, as part of the remuneration for his services, was not a “tenant” within the meaning of the Increase of Rent and Mortgage Interest (Restrictions) Act 1920 (sup.), and was not protected by that Act: see *Bute (Marquis of) v. Penderleith* 1921 S.C. 281; *Pollock v. Assessor for Inverness-shire* 1923 S.C. 693. A servant employed to take care of premises and allowed to occupy them was not a tenant: see *National Steam Car Co. v. Barham* 122 L.T. 315; *Ecclesiastical Commissioners v. Hilder* [1920] W.N. 268.

(e) In s.9(1) of the Act the tenant who applied for repayment of excess rent had to be the tenant during the period in respect of which the application was made (*Riordan v. Minchin* [1949] 1 K.B. 137).

(f) An administratrix of a deceased tenant was a tenant within s.12(1)(f) (*Harrison v. Hopkins* [1950] 1 K.B. 124).

(g) S.12(1)(g) did not include the widow or other member of the tenant’s family so as to enable the statutory tenancy to continue after the death of such person (*Summers v. Donohue* [1945] K.B. 376). See also *Phillips v. Welton* [1948] 2 All E.R. 845. A contractual tenant was included in the expression “tenant” so that his widow obtained the protection of the Acts (*Moodie v. Hosegood* [1952] A.C. 61). A tenant against whom an absolute order for possession had been made was not a “tenant” within the section (*American Economic Laundry v. Little* [1951] 1 K.B. 400). A widow who had succeeded the tenant might grant a sub-tenancy which was protected by the Acts (*Lewis v. Reeves* [1952] 1 K.B. 19). See also *Mellows v. Low* [1923] 1 K.B. 522; *Joint Properties v. Williamson* 1945 S.C. 68.

(h) A statutory tenant under s.15 was a tenant who held over by virtue of his statutory right after the expiration of a contractual tenancy (*Carter v. S.U. Carbur-etter Co.* [1942] 2 K.B. 288). A limited liability company was not capable of being a statutory tenant (*Hiller v. United Dairies (London)* [1934] 1 K.B. 57). If a contractual tenant became bankrupt and remained in possession after the termination of

his lease he did not become a statutory tenant (*Stafford v. Levy* 62 T.L.R. 487). The tenant referred to in s.15(3) was the head tenant (*Knightsbridge Estates Trust v. Deeley* [1950] 2 K.B. 228).

(i) The Rent and Mortgage Interest (Restrictions) Acts 1920 and 1923, did not protect a rent-free tenant of a dwelling-house against an order for the recovery of possession thereof: see *Bracey v. Pales* [1927] 1 K.B. 818.

(j) The expression "the tenant" in s.2(2) of the Rent and Mortgage Interest Restrictions Act 1923 (c. 32) referred to the sitting tenant, that is to say, the person who was the tenant at the time when the lease referred to in the subsection was granted. Where, therefore, a lease was granted to a person who was not the sitting tenant, the dwelling-house was not decontrolled, and the sitting tenant was still protected under the Rent Restrictions Acts: see *Lloyd v. Cook* [1929] 1 K.B. 103, cited LANDLORD, and cases therein cited.

(k) The tenant in s.10(1) meant the original tenant and not an assignee of the original tenancy agreement (*Artillery Mansions v. Macartney* [1949] 1 K.B. 164). The reference was to the actual tenant whose rent was under review and not to the average or normal tenant for that class of property (*Palser v. Grinling* [1948] A.C. 291).

(l) (Rent and Mortgage Interest Restrictions (Amendment) Act 1933 (c. 32), Sched. I, para. (g)) meant the original tenant. Where the tenancy passed, on the death of the original tenant, to a relative under the Increase of Rent and Mortgage Interest (Restrictions) Act 1920 (c. 17), s.12(1)(g), the landlord might recover possession of the premises if required for a person in his employment (*Bolsover Colliery v. Abbott* [1946] K.B. 8). In para. (d) the words "the tenant" were not confined to a statutory tenant (*Regional Properties v. Frankenschwerth* [1951] 1 K.B. 631).

(10) (a) One of two or more joint tenants under a business tenancy is not "the tenant" within the meaning of ss.23(1) and 24(1) of the Landlord and Tenant Act 1954 (c. 56) (*Jacobs v. Chandhuri* [1968] 2 Q.B. 470).

(b) The words "the tenant's business" in Sched. 9, para. 5(1) of the Landlord and Tenant Act 1954 (c. 56) mean the actual or particular business carried on by the tenant claiming compensation and does not include a similar business previously carried out on the premises by someone else (*Connaught Fur Trimmings v. Cramas Properties* [1965] 1 W.L.R. 892).

(11) "Tenants in equal shares *per stirpes*": see *Re Alexander* [1919] 1 Ch. 371.

(12) "Tenants holding over after the termination of the tenancy" (R.S.C., Ord. 113, r. 1). These words did not include unlawful sub-tenants found on the premises after the lawful tenant had terminated the tenancy and left, even though they had been in occupation before the termination of the tenancy (*Moore Properties v. McKeon* [1977] 1 W.L.R. 1278).

"Tenant whose term has expired": see EXPIRE.

Stat. Def., Landlord and Tenant Act 1954 (c. 56), ss.22(1), 55(2); Agriculture (Miscellaneous Provisions) Act 1976 (c. 55, ss.16, 18(5), 24; Rent (Agriculture) Act 1976 (c. 80), s.34; Rent Act 1977 (c. 42), s.152; Housing Act 1980 (c. 51), Sched. 15, para. 7 (3), Sched. 19, para. 19.

See DESIRABLE.

TENANT AT WILL. (1) "Tenant at will is where lands or tenements are let by one man to another, to have and to hold to him at the will of the lessor, by force of which lease the lessee is in possession" (Litt. s.68; see hereon Co. Litt. 55 a). See

hereon *Wright v. Tracey* Ir. Rep. 7 C.L. 134, and *Brew v. Conole* 9 *ibid.* 151, both cited LESS. Cp. SUFFERANCE.

(2) “Tenant at will” (s.7, Real Property Limitation Act 1833 (c. 27)) “applies to tenant at will simply, and does not include a tenancy where there is a clog upon the lessor exercising his will” (*per* Esher M.R., *Warren v. Murray* [1894] 2 Q.B. 648), *e.g.* a right in equity to demand a lease for a term of years. See now Limitation Act 1939 (c. 21), s.9. See also *East Stonehouse v. Willoughby* [1902] 2 K.B. 318, cited ENTRY. See further “cestui que trust,” under CESTUI.

TENANT BY THE CURTESY. See CURTESY.

TENANT FOR LIFE. (1) A tenant for life is, as the phrase implies, one who is entitled to the benefit of property for the term of his, or some other person’s, life. “Estates for life, expressly created by deed or grant, are where a lease is made of lands or tenements to a man to hold for the term of his own life, or for that of any other person, or for more lives than one; in any of which cases he is stiled tenant for life; only, when he holds the estate by the life of another, he is usually called tenant *pur autre vie*” (2 Bl. Com. 120, cited by Chitty J., *Blaydes v. Selby* 7 T.L.R. 567)—a definition which is not confined to an estate under a lease, but applies whatever be the document creating the estate. See LIVE AND RESIDE; RENT FREE; RESIDE.

(2) Speaking broadly, the result of the Settled Land Acts 1882 (c. 38), s.2(5) and 1925 (c. 18), s.19(1) is that the person intended to have the income or enjoyment of the land is the tenant for life for the time being (Co. Litt. 42 a, cited by North J., *Re Carne* [1899] 1 Ch. 324, cited OCCUPATION; *Re Jones* 26 Ch. D. 736; *Re Llanover* [1903] 2 Ch. 16; *Re Llanover Settled Estates* [1926] Ch. 626; see further RESIDE; and see *Re Edwards* [1897] 2 Ch. 412, cited OCCUPATION); and though his title be only equitable he should (subject to reasonable safeguards) be let into possession and have the custody of the deeds (*Re Wythes* [1893] 2 Ch. 369). See further *Hope v. D’Hedouville* [1893] 2 Ch. 361.

(3) As to those who are, or have the powers of, a tenant for life under Settled Land Act 1882 (c. 38), ss.58–63 (see Settled Land Act 1925 (c. 18), ss.20–35): see *Re Jones* sup.; *Re Buccleuch* 31 Ch. D. 135, followed *Re Richardson* [1900] 2 Ch. 778; *Re Searle* [1900] 2 Ch. 829; *Williams v. Jenkins* [1893] 1 Ch. 700; *Vine v. Raleigh, No. 2* [1896] 1 Ch. 37; *Re Pocock and Prankerd* [1896] 1 Ch. 302. See further *Re Osborne to Brights* [1902] 1 Ch. 335, cited CONFLICT; but see *Re Moore’s Settled Estates* [1920] 2 Ch. 229, cited CONCURRENT; see also *Re Home and Parker’s Contract* [1922] 2 Ch. 424, cited CONFLICT; *Re Llewellyn* [1911] 1 Ch. 451, cited BENEFICIALLY ENTITLED; *Re Barlow* [1903] 1 Ch. 382; *Re Iever* [1904] 1 Ir. R. 492; *Re Pollock* [1906] 1 Ch. 146; *Re Llanover* [1907] 1 Ch. 635; *Re Sumner* 80 L.J. Ch. 257; *Re Walmsley* 105 L.T. 332, cited CLASS.

(4) On the contrary: see *Re Hazle* 29 Ch. D. 78; *Re Atkinson* 31 Ch. D. 577; *Re Strangways* 34 Ch. D. 423, but see this last case distinguished, *Re Martyn* 69 L.J. Ch. 733; *Re Horne* 39 Ch. D. 84; *Re Edwards* sup. *Re Hazle* was on the phrase “tenant for years determinable on life.”

(5) Two or more persons may be a “person” having the powers of a tenant for life (*Vine v. Raleigh* sup.), *e.g.* annuitants whose annuities exhaust all the rents and profits (*Re Bennet* [1903] 2 Ch. 136; *Re Johnson* [1914] 2 Ch. 134). See Settled Land Act 1925 (c. 18), ss.19–29.

(6) See also *Re Stamford and Warrington* [1927] 2 Ch. 217; *Re Hanson* [1928] Ch. 96.

(7) Settled Land Act 1882 (c. 38), s.2: see *Re Monckton’s Settlement* [1917] 1 Ch.

224, distinguished in *Re Carnarvon's Settled Estate* [1927] 1 Ch. 138. See Settled Land Act 1925 (c. 18), s.19.

(8) "Tenant for life" (s.24, Sewers Act 1833 (c. 22)) was not confined to a person holding for his own life, but included a tenant *pur autre vie* (*Blaydes v. Selby* 7 T.L.R. 567).

(9) As to the phrase "tenant for life in possession," see *Re Wright to Marshall* 28 Ch. D. 93.

See "tenant in tail after possibility of issue extinct," under TAIL.

As to constructive gift over on death of tenant for life: see DEATH.

As to date of ascertaining person to take after a tenant for life: see DEATH; WIFE.

Investments "according to the direction of the tenant for life": see INVESTMENT.

See CAPITAL MONEY; IMPROVEMENT; INCOME; INCUMBRANCE; INTEREST; OCCUPY; POSTPONE.

Stat. Def., Administration of Estates Act 1925 (c. 23), s.55; Land Charges Act 1925 (c. 22), s.20; Land Registration Act 1925 (c. 21), ss.3 and 86; Law of Property Act 1925 (c. 20), s.205; Settled Land Act 1925 (c. 18), s.117, see also ss.19–29; Finance Act 1968 (c. 44), Sched. 15, para. 13(1).

TENANT FOR YEARS. "If tenements be let to a man for terme of halfe a yeare, or for a quarter of a yeare," he is a tenant for years (Litt. s.67); but, *semble*, that was an old ruling under the Writ of Waste (Co. Litt. 54 b). Ordinarily, nothing less than a yearly tenancy would satisfy the phrase "tenant for years," or "tenant for a term of years." Thus, a yearly tenancy was enough under the Landlord and Tenant Act 1730 (c. 28), s.1 (*Lake v. Smith* 1 B. & P.N.R. 174); but not a weekly tenancy (*Lloyd v. Rosbee* 2 Camp. 453), nor a quarterly tenancy (*Wilkinson v. Hall* 3 Bing. N.C. 531).

See YEAR TO YEAR.

TENANT IN COMMON. (1) "Tenants in common are they which have lands or tenements in fee simple, fee taile, or for terme of life, etc., and they have such lands or tenements by severall titles, and not by a joynt title, and none of them know of this his severall, but they ought by the law to occupie these lands or tenements in common, and *pro indiviso* to take the profits in common. And because they come to such lands or tenements by severall titles, and not by one joynt title, and their occupation and possession shall be by law between them in common, they are called tenants in common" (Litt. s.292).

(2) "A limitation to, or trust for, several, either nominatim or as a class, with any words implying a distinctness of interest, makes them tenants in common: Co. Litt. 188 b" (Elph. 284; see further 3 Jarm. (8th ed.) ch. 46), e.g. EQUALLY; SHARE AND SHARE ALIKE. They take PER CAPITA.

(3) So, a discretionary power of advancement is incompatible with a joint tenancy, and the beneficiaries take as tenants in common (*L'Estrange v. L'Estrange* [1902] 1 Ir. R. 467, cited *Taggart v. Taggart* 1 Sch. & Lef. 88; *Mayn v. Mayn* L.R. 5 Eq. 150); see further *Bennett v. Houldsworth* 55 S.J. 270. See now Law of Property Act 1925 (c. 20), ss.34–36.

See JOINT TENANT; PARTNERSHIP; RECEIVING.

TENANT IN TAIL. (1) Tenant in tail "is where a man holdeth certaine lands or tenements to him and to his heires of his body begotten" (Termes de la Ley, *Taile*). See HEIR; HEIRS OF THE BODY; TAIL. See *Hilbers v. Parkinson* 25 Ch. D. 200, and

Re Dunsany [1906] 1 Ch. 578, both cited SETTLE. See Law of Property Act 1925 (c. 20), ss.130–133.

(2) Fines and Recoveries Act 1833 (c. 74), s.1: “ ‘tenant in tail’ shall mean, not only an actual tenant in tail, but also a person who (where an estate tail shall have been barred and converted into a base fee) would have been tenant of such estate tail if the same had not been barred.”

(3) Under the same Act and section, “ ‘tenant in tail entitled to a base fee’ shall mean a person entitled to a base fee, or to the ultimate beneficial interest in a base fee, and who (if the base fee had not been created) would have been actual tenant in tail.”

(4) The words “adult tenant in tail” in a will were held not to be capable of construction so as to limit them to a person who became tenant in tail by purchase: see *Re Atkinson* [1916] 1 Ch. 91.

“Tenant in tail after possibility of issue extinct”: see TAIL.

See further Settled Land Act 1925 (c. 18), s.117; Law of Property Act 1925 (c. 20), s.176.

TENANT-RIGHT. Away-going future crops fell strictly within the meaning of the words “tenant-right yet to come,” as contained in a bill of sale (*Petch v. Tutin* 15 L.J. Ex. 280).

TENANT’S FIXTURES. See FIXTURES.

TENANTABLE REPAIR. (1) Under an obligation to keep premises in “tenantable repair,” decorative repair is not included; papering, always, and painting, unless needed for the protection of the property, are decorative repairs; nor does the obligation extend to repairing, or restoring, what is worn out by age (*Crawford v. Newton* 36 W.R. 54; *Proudfoot v. Hart* 25 Q.B.D. 42; see further *Wood v. Walsh* [1899] Q.B. 1009, and *Stanley v. Towgood* 6 L.J.C.P. 129, both cited REPAIR); but waste, whether voluntary or permissive is a breach of the obligation (*Proudfoot v. Hart* sup.). “I entirely agree with what was said by Lopes L.J., in the course of the argument, that ‘good tenantable repair of a house is such repair as (taking into account the age of the house, the character of the house, and the locality in which the house is situated) a reasonably minded tenant of the class of tenants who would be likely to want such a house might reasonably require in order to make the house fit for his occupation’ ” (*per* Esher M.R., *Proudfoot v. Hart* sup.). See further *Moxon v. Townsend* 2 T.L.R. 717; *per* Brett L.J., *Truscott v. Diamond Rock-boring Co.* 20 Ch. D. 251, cited NECESSARY.

(2) (a) “Good and tenantable repair” within the meaning of the Increase of Rent and Mortgage Interest (Restrictions) Act 1920 (c. 17): see *Morgan v. Liverpool Corporation* [1927] 2 K.B. 131.

(b) “Proper state of repair,” under s.7 of the Act: see *Woodfield v. Bond* [1922] 2 Ch. 40.

Cp. GOOD CONDITION; GOOD REPAIR; PERFECT REPAIR; REPAIR.

TENANTLIKE. The obligation on a weekly tenant is to use the premises in a tenantlike manner (*Warren v. Keen* [1954] 1 Q.B. 15).

TEND. (1) “Question tending to show” that an accused person has committed another offence, in s.1(f), Criminal Evidence Act 1898 (c. 36): see *R. v. Ellis* [1910] 2 K.B. 746; cp. *Ask*; *R. v. Starkie* 91 L.J.K.B. 663; *Jenkins v. Freit* 129 L.T. 95.

“Tending to show” means “tending to reveal.” Therefore, if the accused has himself deliberately revealed a previous conviction he may be asked questions about the previous offence (*Jones v. D.P.P.* [1962] A.C. 635). See SHOW.

(2) As a general rule any admission of a criminal offence of which a witness has not hitherto been convicted must “tend to criminate” him within the rule which excuses a witness from answering such questions (*Triplex Safety Glass Co. v. Lancegaye Safety Glass* [1939] 2 K.B. 395).

(3) “Tending to criminate” (Foreign Tribunals Evidence Act 1856 (c. 113), s.5). The privilege granted by this section of being excused from answering questions which might “tend to criminate” extends only to criminal matters, and, as affiliation proceedings are a “civil matter” within s.1 of the Act, a putative father cannot claim privilege (*S. v. E.* [1967] 1 Q.B. 367).

“Tending to induce”: see INDUCE.

TENDER. (1) “‘To tender (de tender),’ or *tendre*, is a word common both to the English and French, in Latine *offerre*; and in that sense, and with that Latyn word it is alwayes used in the common law” (Co. Litt. 211 a). See further Cowel.

(2) As to requisites of a tender, see Co. Litt. 207 a, 208 a; *Blumberg v. Life Interests Corporation* [1897] 1 Ch. 171; [1898] 1 Ch. 27; UNDER PROTEST.

(3) Gold coins to any amount, silver not exceeding 40s., and bronze (or copper) not exceeding 1s., could be used in making a legal tender (Coinage Act 1870 (c. 10), s.4). Bank notes, generally speaking, were not valid as a legal tender; but Bank of England notes were, in England, so valid “for all sums above £5, on all occasions on which any tender of money may be legally made, so long as the Bank of England shall continue to pay ON DEMAND their said notes in legal coin,” but no such notes were a legal tender by the Bank of England itself (s.6, Bank of England Act 1833 (c. 98)).

(4) All the precision of a strict legal tender was not required in “tendering” rates to overseers under s.30, Representation of the People Act 1832 (c. 45) (*per* Maule J.); but merely saying “I am prepared to pay them” was not sufficient (*Bishop v. Smedley* 15 L.J.C.P. 73).

(5) “There is a great difference between payment and tender: payment extinguishes the debt; tender does not” (*per* Barry L.J., *Hogg v. Smith* 32 L.R. Ir. 191); therefore, where payment was prescribed as a condition precedent—e.g. as a qualification for the franchise that the person “has paid” his rates (s.3(4), Representation of the People Act 1867 (c. 102)).

(6) In County Court Rules 1892, Ord. 39 B, rr. 48, 49 and 50, “tender” and “payment into court” were used as convertible terms (*The Vulcan* [1898] P. 222, cited FINAL DECREE).

(7) On a sale by tender, “a tender ought to be something which takes effect of itself and binds the tenderer in any event” (*per* Rigby L.J., *South Hetton Coal Co. v. Haswell Co.* [1898] 1 Ch. 465); therefore, where an invitation for tenders states that “the highest net money tender” will be accepted, the inviter is not bound to accept an offer of “such a sum as will exceed by (a stated amount) the amount offered” by any other tenderer (*ibid.* [1898] 1 Ch. 465). See further SUBJECT TO.

(9) Mere acceptance of a tender for work will not conclude a bargain where a formal contract is stipulated for and terms have to be arranged besides the work to be done and the money to be paid (*Bozson v. Altrincham* 67 J.P. 397).

“Making or tendering”: see SATISFACTION.

“Tender his vote”: see VOTE.

TENEMENT. (1) A tenement is a holding of real property—using the word “holding” in its wide meaning of the possession of realty, or of something issuing out of or being part of realty, and not as restricted by any statutory interpretation.

(2) “ ‘Tenement’ includeth not only all corporate inheritances, which are or may be holden, but also all inheritances issuing out of any of those inheritances, or concerning or annexed to or exercisable within the same . . . as, rents, estovers, commons, or other profits whatsoever, granted out of land” (Co. Litt. 20 a, applied in *Martyn v. Williams* 26 L.J. Ex. 117, and *Hastings v. North Eastern Railway* [1898] 2 Ch. 674, both cited LEASEHOLD REVERSION). See further *inf.*

(3) “The most comprehensive words of description applicable to real estate are ‘tenements and hereditaments,’ as they include every species of realty, as well corporeal as incorporeal” (2 Jarm. (8th ed.) 1270; see further Co. Litt. 6 a, 19 b, 20 a). And it is said that “by the grant of all tenements, will pass as much as by the grant of all hereditaments” (Touch. 91); but hereon Preston, in his edition of the Touchstone, says “this proposition is too general,” and Lord Coke says that “tenement” is a large word to grant realty, but “hereditament” is the largest (1 Inst. 6).

(4) “An annuity in fee, not being a rent charge, is an hereditament, but not a tenement; neither is a condition a tenement, but it is an hereditament, 3 Rep. 2; 2 Bl. Com. 17; Salk. 239”; tenement “doth not comprehend a personal annuity in fee; and an annuity for life is neither a tenement or hereditament; and an office for life is a tenement, and not an hereditament” (Preston’s Addns. to Touch. 91).

(5) “ ‘Tenement,’ though in its vulgar acceptation it is only applied to houses and other buildings, yet in its original, proper, and legal sense, it signifies everything that may be holden, provided it be of a permanent nature; whether it be of a substantial and sensible, or of an unsubstantial ideal kind” (2 Bl. Com. 16, cited by Lord Chelmsford, *Beauchamp v. Winn* L.R. 6 H.L. 241; see also Touch. 91). Thus, this word will include a rabbit warren (*R. v. Piddletrenthide* 3 T.R. 772), or an advowson (*Westfaling v. Westfaling* 3 Atk. 460; *Gully v. Exeter (Bishop)* 5 L.J.O.S.C.P. 178; but see *Kensey v. Langham* Ca. t. Talb. 145, n. e), or statutory local coal duties (*per Martin B., A.-G. v. Black* L.R. 6 Ex. 82); or a coal duty granted by the Crown (see *A.-G. v. Duke of Richmond* [1907] 2 K.B. 940); and may include tithes (*Powell v. Bull* 1 Comyn, 265; *R. v. Skingle* 1 Stra. 100; *R. v. Barker* 6 A. & E. 388; *R. v. Ellis* 3 Price, 323; but see *R. v. Nevill* 8 Q.B. 452); and includes a profit à prendre (*Doe d. Hanley v. Wood* 2 B. & Ald. 724; *Muskett v. Hill* 9 L.J.C.P. 201; *Martyn v. Williams* 26 L.J. Ex. 117). So, “a dignity, whether it be granted of a place or not, is a ‘tenement’ within the Statute De Donis, and consequently not forfeited on an attainder for felony” (*per Chitty J., Re Rivett-Carnac’s Will* 30 Ch. D. 136, citing *R. v. Knollys* 2 Salk. 509; and *Ferrer’s Case* 2 Eden, 373; but see this decision adversely criticised, Hood & Challis on Conveyancing (6th ed.), 277).

(6) On the other hand, “tenement” sometimes receives its popular meaning of “house” (*Yorkshire Insurance v. Clayton* 8 Q.B.D. 421). “The common people still use the word, as in the days of Blackstone, to mean a house” (*per Cotton L.J., Dashwood v. Ayles* 55 L.J.Q.B. 10); or it may, even now, sometimes be the equivalent of “dwellinghouse” (*Minifie v. Banger* 55 L.J.Q.B. 10; *per Bramwell B., Cornish v. Cleife* 34 L.J. Ex. 21).

(7) “That [the word ‘tenement’ in a lease] is an expression which is sometimes used to mean a house and in particular a dwelling-house. That, however, is not its strictly correct meaning in law, its correct meaning extending, as I understand, to every kind of hereditament, both corporeal and incorporeal” (*per Jenkins L.J. in Levermore v. Jobey* [1956] 1 W.L.R. 697).

(8) “With respect to the word ‘tenements’ or *tenementa*, in Co. Litt. 20 a, it is stated, ‘this is the only word which the said Statute of Westm. 2, that created estates taile, useth; and it includeth not only all corporate inheritances, which are or may be holden, but also all inheritances issuing out of any of those inheritances, or concerning or annexed to or exercisable within the same, though they lie not in tenure, therefore all these without question may be intailed.’ That is a proper legal definition of ‘tenement.’ I think ‘tenement,’ when used at all in connection with a house or room, must mean something of the same kind, or of the same character, and a thing absolutely immoveable from the land” (*per* Martin B., *Fredericks v. Howie* 31 L.J.M.C. 249; see further *R. v. Manchester Waterworks Co.* 1 B. & C. 630; *R. v. East London Waterworks Co.* 17 Q.B. 512; *Colebrooke v. Tickell* 5 L.J.K.B. 180; but see *R. v. Shrewsbury Gas Co.* 1 L.J.M.C. 18). In *Fredericks v. Howie* it was held that a portable booth used by strolling players is not a “tenement,” within s.46, Metropolitan Police Act 1839 (c. 47), which prohibits keeping, etc., “any house or other tenement” as an unlicensed theatre. See PLACE.

(9) So, “tenement,” in s.167, Towns Improvement Clauses Act 1847 (c. 34), meant property capable of visible and physical occupation, and did not include a several fishery (*Redington v. Millar* 24 L.R. Ir. 65); and, *semble*, “tenements,” in s.87 of the same Act, did not include manufactories (*Lyndon v. Standbridge* 26 L.J. Ex. 386).

(10) A freehold rent charge was within the words “freehold lands or tenements,” in s.18, Representation of the People Act 1832 (c. 45) (*Druitt v. Christchurch Colt Reg. Ca.* 328; *Dodds v. Thompson* L.R. 1 C.P. 133).

(11) “Tenement” (s.3, Lands Clauses Consolidation Act 1845 (c. 18)), as affected by its context “of any tenure”: see *Great Western Railway v. Swindon & Cheltenham Railway* 9 App. Ca. 787, cited HEREDITAMENT. See further TENURE.

(12) “Lands, tenements and hereditaments,” Fraudulent Conveyances Act 1584 (c. 4), includes copyholds (*Doe d. Tunstill v. Bottriell* 5 B. & Ad. 131).

(13) “Lands, tenements, or hereditaments” (s.4, Land Tax Act 1797 (c. 5)) did not include a water company’s mains (*Chelsea Waterworks Co. v. Bowley* 17 Q.B. 358); but those words did comprise the arched tunnel of the Metropolitan Railway running under public roadways (*Metropolitan Railway v. Fowler* [1893] A.C. 416). See hereon *Southport v. Ormskirk* [1894] 1 Q.B. 196, cited EASEMENT.

(14) Public lavatories and sanitary conveniences under public streets, provided and maintained by and vested in the sanitary authority under s.44, and regulated under s.45, Public Health London Act 1891 (c. 76), were “lands, tenements, or hereditaments” within s.4, Land Tax Act 1797 (c. 5) (*Westminster v. Johnson* [1904] 2 K.B. 737, cited HAVING).

(15) For a collection of cases on “tenement,” as used in Poor Relief Act 1662 (c. 12), see 10 Chitty’s Statutes (6th ed.), 198. Those decisions gave the word “a much larger construction than the legislature intended” (*per* Denman C.J., *R. v. Tadcaster* 4 B. & Ad. 708).

(16) “Lands or tenements” (s.8, Statute of Frauds 1677 (c. 3)) did not comprise personalty (*Nab v. Nab* 10 Mod. 404; *Fordyce v. Willis* 3 Bro. C.C. 577).

(17) “Tenement” (s.23, Truck Act 1831 (c. 37)): see *Chawner v. Cummings* 8 Q.B. 311, cited ARTIFICER.

(18) House “divided into and let in different tenements,” as regards inhabited house duty: see DIVIDE; *London & Westminster Bank v. Smith* 85 L.T. 747; 87 L.T. 244, cited HOUSE.

(19) “Tenement factory,” “tenement workshop”: see FACTORY. See further

Toller v. Spiers & Pond [1903] 1 Ch. 362, and *Re Brass and London County Council* [1904] 2 K.B. 336, both cited FACTORY.

(20) "Tenement factory," within meaning of s.149(1), Factory and Workshop Act 1891 (c. 75): *Mumby v. Volp* 141 L.T. 663.

(21) Annual value of "tenement supplied with water" (s.68, Water Works Clauses Act 1847 (c. 17)): see *Grand Junction Waterworks Co. v. Davies* [1897] 2 Q.B. 209, cited ANNUAL VALUE.

"Other tenements": see OTHER; PROPERTY OTHER THAN LAND.

"Tenement factory." Stat. Def., Factories Act 1961 (c. 34), s.176(1).

Stat. Def., Housing Act 1964 (c. 56), s.44.

TENENDUM. The tenendum of a deed has the same office as the habendum, and commences with the words "to hold": see HAVE AND TO HOLD; 2 Bl. Com. 298, 299.

TENETS. While dogmas may properly be described as tenets, the latter word has a much wider range, and includes opinions on religious matters which do not involve the holder of such opinions in the risk of expulsion from his church (*Strickland v. Bonnici* 78 S.J. 820).

TENOR. (1) "Tenor of writs, records, etc., is the substance or purport of them; or a transcript or copy. Tenor of a libel hath been held to be a transcript which it cannot be if it differs from the libel, and *juxta tenorem* imports it; but not *ad effectum*, etc., for that may import an identity in sense but not in words; 2 Salk. 417. In action of debt, brought upon a judgment in an inferior court, if the defendant pleads *nul tiel record*, the tenor of the record only shall be certified; and, by Hale C.J., it may be the same on certioraris: 3 Salk. 296. A return of the tenor of an indictment from London, on a *certiorari* to remove the indictment, is good by the city charter; but in other cases it is usual to certify the record itself: 2 Hawk. P.C., ch. 27, ss.26, 76" (Jacob).

(2) In libel the law attaches a technical meaning to the word "tenor," as signifying either an exact copy, or a statement of the libel verbatim. " 'Tenor' has so strict and technical a meaning as to make it necessary to recite verbatim" (*R. v. May* 1 Doug. 194); but the expression "manner and form" means nothing more than a substantial recital (*Wright v. Clements* 3 B. & Ald. 503). "There is a distinction to be observed between the legal terms 'tenor' and 'form,' and the setting out of an instrument 'according to the tenor' or 'according to the form.' 'Tenor' has a stricter sense than 'form.' In the former case, an instrument must be set out *in hæc verba*, but where a form is to be pursued the same strictness is not required" (*per Crampton J., Mount-Cashell v. O'Neill* 2 Ir. Com. Law Rep. 454). In the same strict way "tenor" is construed in America (*Commonwealth v. Stevens* 1 Mass. 203; *Commonwealth v. Wright* 1 Cush. 46; *People v. Warner* 5 Wend. 273). But see IN ACCORDANCE WITH THE FORM.

(3) The maker of a promissory note engaged that he would pay it "according to its tenor" (Bills of Exchange Act 1882 (c. 61), s.88), *i.e.* according to its exact import (*Good v. Walker* 61 L.J.Q.B. 736).

(4) An allegation that an acceptance was presented "according to its tenor and effect," imports its due presentation and at its particular place of presentation (*Huffam v. Ellis* 3 Taunt. 415; *Bush v. Kinnear* 6 M. & S. 210).

(5) "According to the tenor of the title deeds," following a description of property devised, *semble*, does not enlarge the devise and is merely part of the description (*Sturgis v. Dunn* 19 Bea. 135).

(6) Executor "according to the tenor" of a will, is a phrase distinguishing an executor of a will from one thereby appointed, and means a person not nominated as executor, but who is directed by a will to do one or more of the acts which are competent to, and fall within the office of, the executor nominated (*Re Manly* 31 L.J.P.M. & A. 198; *Re Punchard* L.R. 2 P. & D. 369; *Re Leven & Melville* 15 P.D. 22; *Re Wilkinson* [1892] P. 227; see further *Re Way* [1901] P. 345; *Re Cook* [1902] P. 114, cited DESIRE; *Re Pryse* [1904] P. 301. On the contrary, see *Re Oliphant* 30 L.J.P.M. & A. 82; *Re Lowry* L.R. 3 P. & D. 157; *Smith v. Kerrane* Ir. Rep. 11 Eq. 447. See hereon Wms. Exs. (13th ed.) 10 *et seq.*

TENTERDEN'S (LORD) ACTS. Statute of Frauds Amendment Act 1828 (c. 14); see now s.13, Mercantile Law Amendment Act 1856 (c. 97).

Prescription Act 1832 (2 & 3 Will. 4, c. 71).

Tithe Act 1832 (2 & 3 Will. 4, c. 100).

TENTHS. See TITHES. "The tenths, or *decimæ*, were the tenth part of the annual profit of each (ecclesiastical) living" (1 Bla. Com. 284). See further FIRST FRUITS.

TENURE. (1) "The word 'tenure' signifies the relation of tenant to lord" (*per Selborne C., A.-G. Ontario v. Mercer* 8 App. Ca. 767); "the service whereby lands and tenements be holden" (Co. Litt. 1 a).

(2) For an account of the old English tenures, see Littleton's Tenures; Co. Litt. 1-141 b; 2 Bl. Com., ch. 5.

(3) By s.1, 12 Car. 2, c. 24, the ancient English tenures were abolished and turned into free and common socage, except frank-almoign and copyhold, and some of the honorary services of grand serjeanty.

(4) The chief tenures of importance were freehold, copyhold, leasehold, borough English and gavelkind. See hereon 2 Bl. Com., ch. 6; Wms. R.P. (25th ed.), Pt. I, ch. 2. But copyhold, borough English, and gavelkind have been abolished on deaths after 1925. See Administration of Estates Act 1925 (c. 23), s.45. Cp. TENANT.

(5) Land or hereditaments of "any," or "whatever" tenure: see HEREDITAMENT; LAND. The cases there cited show that "tenure" has been relied on to include leaseholds for years in a definition which otherwise would have only included realty; but in *Wilson v. Hood* (33 L.J. Ex. 204) the word had the converse effect of showing that realty was included in a phrase which at first sight indicated only personalty.

As to "tenure in capite," see CAPITE.

Ratione tenuræ: see RATIONE.

TERCE. A widow's third, her *Jus Relictæ*: see LEGITIM.

TERM. (1) The primary signification of "term" is term for years (*Cavanagh v. Morrisson* 1 Fox & Smith, 81).

(2) "It is said by my Lord Coke that the word 'term,' though it is more properly applied to a term for years, yet may mean an estate for life, and it is plainly in this deed used in that sense; the trustees are to permit Robert Dormer to receive the profits during the term of his life; and the estate to the children is not to commence till the end, or other sooner determination, of the said term, which by referring the relative to the last antecedent, must mean the term of his life; as to the words 'sooner determination,' inserted after the estate for life, these are insensible and may be rejected; they were probably thrown in, *currente calamo*, or by following a

precedent, and if the precedent was before the Reformation, when there was a civil death (as well as a natural) by entering into religion, it might then have a meaning" (*per* Hardwicke C., *Smith v. Packhurst* 3 Atk. 137). See also *Wrotesley v. Adams* 1 Plowd. 198.

(3) The term of a lease is the period between the date of the lease and the date on which the lease is limited to expire; consequently where a lease is granted as from a past date "the expiration of the first fifty years of the term" within s.84(12) of the Law of Property Act 1925 (c. 20), occurs at fifty years from the date of the lease (*Cadogan (Earl) v. Guinness* [1936] Ch. 515).

(4) The term of a lease may, for some purposes, end on one day, and for other purposes, on another day (*St. Germain v. Willan* 2 B. & C. 216).

(5) "The word 'term,' in a covenant in a lease may signify either the time or the estate granted" (Woodf. (24th ed.) 213, 214; *Cottee v. Richardson* 7 Ex. 143, 151).

(6) "Term," in an agreement for a lease, will generally mean the period or space of time agreed for; so that the actual grant of the lease is not a condition precedent to the stipulations relating to the "term" (*Wood v. Copper Miners' Co.* 23 L.J.C.P. 209; *Bowes v. Croll* 27 L.T.O.S. 77; *Martin v. Smith* L.R. 9 Ex. 50).

(7) Rateable hereditament let "for a term not exceeding 3 months" (s.1, Poor Rate Assessment and Collection Act 1869 (c. 41)) included a weekly tenancy, although it could continue for a long time, for the phrase "means that the tenant must, by virtue of his holding, have a 'right' to the premises for some period not longer than 3 months" (*per* Alverstone C.J., *Hammond v. Farrow* [1904] 2 K.B. 332). Cp. NOT TO BE.

(8) A power to lease for any term not exceeding a stated number of years authorises a lease for such a term determinable at the option of the lessor or lessee: see *Sheehy v. Muskerry* 1 H.L. Cas. 576, 589; *Edwards v. Millbank* 29 L.J. Ch. 45. So, of a lease by a mortgagor under s.99, Law of Property Act 1925 (c. 20): see *King v. Bird* [1909] 1 K.B. 837.

(9) Where a "term" of periods of time is spoken of, successive time is implied. Therefore, residence for "a term of 3 years," to give a pauper settlement under s.34, Divided Parishes, etc., Act 1876 (c. 61), had to be for three whole consecutive years, without receiving relief or otherwise coming within the proviso to s.1, Poor Removal Act 1846 (c. 66) (*Dorchester v. Weymouth* 16 Q.B.D. 31; *St. Olave's v. Canterbury* [1897] 1 Q.B. 682, which last case overrules *R. v. Hartfield* 17 Q.B. 746). See PATIENT.

(10) "Term or number of years certain" (Recovery of Possession by Landlords Act 1820 (c. 87), s.1): a tenancy for 99 years determinable on lives was not within this phrase (*Doe d. Pemberton v. Roe* 5 L.J.O.S.K.B. 289), nor was a tenancy from quarter to quarter determinable by a 3 months' notice, or on the tenant losing his beer licence (*Doe d. Carter v. Roe* 12 L.J. Ex. 27).

(11) "Term of years certain" (Landlord and Tenant Act 1954 (c. 56), s.38(4), Law of Property Act 1969 (c. 59), s.5) can, in this context, include a term of less than a year (*Re Land and Premises at Liss, Hants* [1971] Ch. 986).

(12) "Term of the contract" (Moneylenders Act 1927 (c. 21), s.6(2)). A separate arrangement as to the mode of payment of a loan is not a "term of the contract" which has to be contained in the memorandum under this section (*Hanyet Securities v. Mallett* [1968] 1 W.L.R. 1265).

(13) "Any longer term than he had under the original sub-lease" (Law of Property Act 1925 (c. 20), s.146(4)) refers to the term the underlessee would have had but for the forfeiture of his underlease as the result of the forfeiture of the superior lease (*Cadogan v. Dimovic and Others* [1984] 2 All E.R. 168).

“Term of years certain” (Leasehold Reform Act 1967 (c. 88), s.3(1)), see LONG TENANCY.

“Term of years absolute.” Stat. Def., Administration of Estates Act 1925 (c. 23), s.55; Land Registration Act 1925 (c. 21), s.3; Law of Property Act 1925 (c. 20), s.205; Settled Land Act 1925 (c. 18), s.117; Trustee Act 1925 (c. 19), s.68; Universities and College Estates Act 1925 (c. 24), s.43; Landlord and Tenant Act 1927 (c. 36), s.25.

“Term” of the policy. Stat. Def., Income and Corporation Taxes Act 1970 (c. 10), s.334(2).

“Estate, term and interest”: see ESTATE AND INTEREST.

“Unexpired term”: see UNEXPIRED.

“Term”: see Law of Property Act 1925 (c. 20), s.153.

Covenant not to part with “any part of the term”: see ASSIGN.

During the term: see DURING.

See also FIXED TERM.

TERMINAL. (1) “Terminal charges” (Railway and Canal Traffic Act 1888 (c. 25), s.55) “includes charges in respect of stations, sidings, wharves, depots, warehouses, cranes, and other similar matters, and of any services rendered thereat.” In the same Act, s.33(3), see *Hamilton v. Caledonian Railway* 43 Sc. L.R. 696. Cp. “services incidental,” under INCIDENTAL; EXTRAORDINARY SERVICES.

(2) “Terminal station,” in respect of the Manchester, Sheffield & Lincolnshire Railway, does not include “a junction between the railway and a SIDING not belonging to the company, or (in respect of merchandise passing to or from such siding) any station with which such siding may be connected”: see hereon *Manchester, Sheffield & Lincolnshire Railway v. Pidcock* 10 Ry. & Can. Traffic Ca. 150; *Pidcock v. Manchester, Sheffield & Lincolnshire Railway* 9 *ibid.* 45.

TERMINATE. (1) An agreement for letting whereby the landlord agreed that he would not “raise the rent, nor terminate the tenancy” of the tenant or his wife: held, a demise for the lives of the tenant or his wife (*Mardell v. Curtis* 43 S.J. 587). See further MOLEST; REMAIN.

(2) A notice “terminating a tenancy” on the last day of a current period may fairly be said to mean the same thing as a notice to quit and deliver up possession on the following day, for in both cases the landlord is intimating that the last day of the current period is to be the last day of the tenancy (*Crate v. Miller* [1947] K.B. 946).

(3) Tenancy terminated by the operation of a notice (Landlord and Tenant Act 1927 (c. 36), s.4(1)): s.4(1) did not apply if the tenancy had terminated by effluxion of time; “terminated” was used deliberately and was not to be construed as “terminable” (*Allied Ironfounders v. John Smedley* [1952] 1 All E.R. 1344).

(4) A tenancy is not “terminated” within the meaning of s.24(1) of the Landlord and Tenant Act 1954 (c. 56) unless notice to quit has been given in accordance with the terms of the Act (*Orman Bros. v. Greenbaum* [1954] 1 W.L.R. 1520).

(5) “Termination” (Protection from Eviction Act 1964 (c. 97), s.1(1)). The issue of a writ of summons in an action for forfeiture for breach of a covenant to pay rent did not of itself “terminate” the tenancy for the purposes of this section (*Borzak v. Ahmed* [1965] 2 Q.B. 320).

(6) Agricultural Holdings Act 1948 (c. 63), s.34(2): see *Swinburne v. Andrews* [1923] 2 K.B. 483.

(7) The termination of an employment agreement does not necessarily mean that all legal relationships between the parties come to an end, thus the employee may

be obliged to assign patent rights to the employer (*British Celanese v. Moncrieff* [1948] Ch. 564).

(8) To alter the nature of employment was not necessarily to terminate that employment within the meaning of the Essential Work (General Provisions) (No. 2) Order 1942 (No. 1594), Art. 4(1)(a) (*Adrema v. Jenkinson* [1945] K.B. 446).

(9) A medical assistant who is notified that his two year appointment will not be renewed when it expires has not had it "terminated" within the meaning of para. 190 of the Terms and Conditions of Service of Hospital Staff 1971 (*R. v. Secretary of State for Social Services, ex p. Khan* [1973] 1 W.L.R. 187).

(10) "Termination of the agency" and "termination of the agreement," in an underwriting agency agreement, mean the same thing, *i.e.* the cessation of all the mutual obligations of either party forthwith (*Gardner Mountain and D'Ambrumenil Ltd. v. Inland Revenue Commissioners* [1947] 1 All E.R. 650).

(11) "Termination of the war," in a will, was held to mean the termination of the war with Germany, the date of the termination whereof had been determined under the provisions of the Termination of the Present War (Definition) Act 1918 (c. 59), s.1, and not the war generally: see *Re Rawson* 90 L.J. Ch. 304.

(12) As to the meaning of the phrase "termination of the war," in a policy of insurance, see *Kotzias v. Tyser* [1920] 2 K.B. 69, where it was held that although the Treaty of Peace was signed June 28, 1919, peace had not been concluded between the Powers on or before June 30, 1919, within the meaning of the policy, because the Powers did not exchange and deposit ratifications of the Treaty until January 1920.

(13) "'Terminate' is an ambiguous word, since it may refer to a termination by a right under the [hire-purchase] agreement or by a condition incorporated in it or by a deliberate breach by one party amounting to a repudiation of the whole contract" (*per* Lord Radcliffe in *Bridge v. Campbell Discount Co.* [1962] A.C. 600).

(14) A pregnancy is "terminated by a registered medical practitioner" within the meaning of s.1(1) of the Abortion Act 1967 (c. 87) when the treatment prescribed and initiated by that practitioner, who remains in charge of it throughout, is carried out in accordance with his directions by qualified nursing staff entrusted with its execution in accordance with accepted medical practice (*Royal College of Nursing v. Department of Health and Social Security* [1981] A.C. 800).

Termination of risk: see RISK.

"Traffic arising and terminating on the railway": see ARISING.

Cp. PERMANENT; TEMPORARY.

TERMINUS. The sea may be a sufficient *terminus ad quem* for a highway, although the public has only limited rights over the foreshore (*Williams-Ellis v. Cobb* [1935] 1 K.B. 310).

See also RIGHT OF WAY.

TERMS. (1) "Contract which, 'according to the terms thereof,' ought to be performed within the jurisdiction" (R.S.C., Ord. 11, r. 1(e); see now Ord. 11, r. 1(f)(iii)) does not mean that the place of performance is to be stated in terms; it suffices if such place appears from the contract and its circumstances (*Reynolds v. Coleman* 36 Ch. D. 453). See further WITHIN THE JURISDICTION.

(2) (Increase of Rent and Mortgage Interest (Restrictions) Act 1920 (c. 17), s.2(3).) Where the terms on which a dwelling-house was held were less favourable to the tenant than the previous terms, the rent should have been increased. "Terms" here meant the legal rights and obligations of parties as determined by the

provisions of the contract or by law (*Asher v. Seaford Court Estates Ltd.* [1950] A.C. 508, 520).

(3) "The other terms of the new tenancy" (Landlord and Tenant Act 1954 (c. 56), s.26(3)) include the term as to duration of the tenancy (*Sidney Bolsom Investment Trust v. E. Karmios & Co. (London)* [1956] 1 Q.B. 529).

(4) A county council licence for a cinematograph "on such terms and conditions and under such restrictions as (subject to regulations of the Secretary of State) the council may determine" (s.2(1), Cinematograph Act 1909 (c. 30)) entitled the council to impose the condition that the exhibition should not be opened on Sundays, Good Fridays, or Christmas Day: see *London County Council v. Bermondsey Bioscope Co.* 80 L.J.K.B. 141; see also *R. v. London County Council* [1915] 2 K.B. 466; *Mills v. London County Council* [1925] 1 K.B. 213. "On such terms," etc.: see JUST.

(5) In an agreement between two railway companies giving running powers to one company over the other's lines "on terms to be agreed on," "terms" includes not only the money payment, but the traffic arrangements necessary for regulating the joint traffic (*Swansea Improvements Co. v. Swansea & Mumbles Railway 3 Ry. & Can. Traffic Ca.* 339, 359). See hereon *Taff Vale Railway v. Barry Dock & Railway Co.* 7 *ibid.* 52.

(6) "Terms and conditions" (Liverpool Corporation (General Powers) Act 1930 (c. cxii), s.29) under which licences might be granted did not include money payments (*Liverpool Corporation v. Maiden (Arthur)* [1938] 4 All E.R. 200).

(7) An option in a lease to purchase the property for £4,000 upon "such terms and conditions as shall be agreed upon" between the parties was construed to refer to terms as to the payment of the sum, but it was too vague to constitute the basis of an enforceable contract (*Re W. G. Apps & Sons Pty. Ltd. and Hurley* [1949] V.L.R. 7).

(8) "Terms, conditions or stipulations" (Electricity (Supply) Act 1919 (c. 100), s.22(1)) as not including pecuniary terms: see *West Midlands Joint Electricity Authority v. Pitt* [1932] 2 K.B. 1.

(9) (Mining Industry Act 1926 (c. 28), s.13(2)) which may be varied by the Commission did not include royalties and rents (*Consett Iron Co. v. Clavering Trustees* [1935] 2 K.B. 42).

(10) "Terms and conditions" (Industrial Relations Act 1971 (c. 72), s.167(1)(a)) relate to contractual terms and conditions (*Cory Lighterage v. Transport and General Workers Union* [1973] 2 All E.R. 558).

(11) The expression "terms and conditions of employment" in the Trade Union and Labour Relations Act 1974 (c. 52), s.29(1), should be given a very wide meaning so as to include practices understood and applied by common consent although not written into the contract of employment (*British Broadcasting Corp. v. Hearn* [1977] 1 W.L.R. 1004).

(12) "On such terms as to costs . . . as the court . . . thinks fit" (R.S.C., Ord. 21, r. 3). On an application to withdraw an application for a new tenancy the "terms" within the meaning of this rule were the terms the court could impose on the applicant as a pre-requisite to granting him leave to discontinue, and were not terms which the court could impose on the respondent (*Covell Matthews & Partners v. French Wools* (1977) 35 P. & C.R. 107).

Stat. Def., Landlord and Tenant Act 1954 (c. 56), s.69(1); Industrial Relations Act 1971 (c. 72), s.167.

See MODERATE TERMS; SAME; USUAL.

TERRA. “ ‘Terra’ was formerly used as the ordinary term of a grant of an extensive territory” (*per* James, *arg.* *Beaufort v. Swansea* 3 Ex. 415); “it may embrace, as appears from the authorities cited by Mr. James, as much as the word ‘manor’ may” (*per* Parke B., *ibid.* 425).

Terra affirmata—Land let to farm (Jacob).

Terra assisa—see *ASSISUS*.

Terra boscalis—Woody lands (Jacob).

Terra culta—Land tilled or manured; inculta, uncultivated (Cowel).

Terra debilis—Weak or barren ground (Jacob).

Terra dominica—see *DEMESNE*.

Terra excultabilis—Land that may be tilled (Cowel).

Terra frusca—Land that hath not lately been ploughed (Cowel).

Terra giliforata—Land held by the payment of a gilliflower (Cowel).

Terra hydata—Land subject to payment of hydage (Jacob).

Terra inculta—see *Terra culta*, *sup.*

Terra lucrabilis—Land gained from the sea, or enclosed from a waste (Cowel).

Terra nova—Land newly converted from wood to arable (Cowel).

Terra puturata—Forest land held by the tenure of furnishing meat to the keepers of the forest (Cowel).

Terra Regis—see *ANCIENT DEMESNE*.

Terra sabulosa—Gravelly or sandy ground (Cowel).

Terra testamentalis—Land deviseable by will (Jacob).

Terra vestita—Land sown with corn (Cowel).

Terra villanorum—see *NEATLAND*.

Terra wainabilis—Tillable land (Cowel; Jacob). *Cp.* *PLOW-LAND*.

Terra warennata—Land having free warren (Jacob).

See *LAND*; *PORCA TERRÆ*; *QUADRUGATA TERRÆ*; *QUARENTENA TERRÆ*.

TERRAGE. A customary due “for the necessary unlading of goods before they come up to the common quay” (Hale, *De Portibus Maris*, ch. 6).

TERRE TENANT. “Tenants of the freehold,” as distinguished from tenants for years, “always are in law intended within these words *tertenants*” (*Brediman’s Case* 6 Rep. 58 b; cited *Re Herbate Rents Charity* [1896] 2 Ch. 820). “ ‘Terre tenant’ is he who has the actual possession of the land, which we otherwise call the occupation” (Cowel: see further 2 Bl. Com. 91); but that is a misconception, for “it appears from a note to *Jeffreson v. Morton* (2 Saund. 9, n. 9) that it generally means the owner of the fee simple” (*per* Crampton J., *Carroll v. Cooke* 1 Jebb & Sy. 41), and includes a mortgagee in fee simple, although he has never been in possession, and such mortgagee’s liability to the rentcharge that may be on the land: see *Cundiff v. Fitzsimmons* [1911] 1 K.B. 513.

TERRESTRES. See *FOWL*.

TERRIER. “ ‘Terrar,’ *terrarium vel catalogus terrarum*, is a book or roll, wherein the several lands either of a single person, or of a town, are described, containing the quantity of acres, boundaries, tenants names, and such like (18 Eliz., c. 17)” (Cowel). See *R. v. Hall* L.R. 1 Q.B. 632, cited *COMMUNICANT*, as to the admissibility in evidence of an ancient terrier.

See *INVENTORY*.

TERRITORIAL WATERS. (1) See hereon *R. v. Keyn* 12 Ex. D. 63, cited SEA COAST, on which see *Carr v. Francis* [1902] A.C. 181, also cited SEA COAST; ENGLAND; REALM. Cp. WATERS. A collision in the Bristol Channel was held not to have occurred within territorial waters (*The Fagernes* [1927] P. 311).

(2) This expression in ss.1 and 6 of the Wireless Telegraphy Act 1949 (c. 54) means territorial waters from time to time, their determination being governed by declarations of sovereignty from time to time by the Crown, or waters recognised as territorial by international usage from time to time insofar as such usage was recognised in this country (*R. v. Kent Justices, ex p. Lye* [1967] 2 Q.B. 153; *Post Office v. Estuary Radio* [1968] 2 Q.B. 740).

Stat. Def., Territorial Waters Jurisdiction Act 1878 (c. 73), s.7.

TERRITORY. (1) "Territory" (Order in Council of September 30, 1873, arts. 1, 2) is used in the treaty between this country and Norway and Sweden as equivalent to "jurisdiction," and covers a ship when it is in the territorial waters of a third power (*R. v. Brixton Prison Governor, ex p. Minervini* [1959] 1 Q.B. 155).

(2) "Territory" (Israel (Extradition) Order 1960 (No. 1660), art. 1) means any area over which a contracting party exercises effective jurisdiction, and is not necessarily restricted to areas of *de jure* sovereignty (*R. v. Governor of Brixton Prison, ex p. Schtraks* [1964] A.C. 556).

TERROR. See DURESS.

TERRORISM. Stat. Def., Prevention of Terrorism (Temporary Provisions) Act 1984 (c. 8), s.14.

TEST. (1) Test action: see *Amos v. Chadwick* 9 Ch. D. 459; *Bennett v. Bury* 5 C.P.D. 339; *Healey v. A. Waddington & Sons* [1954] 1 W.L.R. 688.

(2) Test ballot: see *Britt v. Robinson* L.R. 5 C.P. 503, cited PROCEDURE.

Stat. Def., Road Traffic Act 1972 (c. 20), s.53(5).

"Test of competence to drive." Stat. Def., Road Traffic Act 1960 (c. 16), s.115.

"Testing equipment." Stat. Def., Weights and Measures Act 1963 (c. 31), s.58(1).

TEST CERTIFICATE. "Any test certificate" (Road Traffic Act 1972 (c. 20), s.169(2)(b)). A forged test certificate is a "test certificate" for the purposes of the offence of using a test certificate with intent to deceive contrary to this section (*R. v. Pilditch* [1981] R.T.R. 303).

TESTAMENT. (1) "A testament is the true declaration of our last will, of that we would to be done after our death" (Termes de la Ley). See further *Lemage v. Goodban* L.R. 1 P. & D. 62, applied in *Townsend v. Moore* [1905] P. 66; *per Davey* L.J., *Re Elcom* [1894] 1 Ch. 303.

(2) Littleton (s.167) uses "testament" as applicable to a devise of lands and tenements; but Coke's commentary thereon is, "but in law most commonly, *ultima voluntas in scriptis* is used, where lands or tenements are devised, and *testamentum*, when it concerneth chattels" (Co. Litt. 111 a). See further Wms. Exs. (12th ed.) 4; DEVISE.

(3) "Testament" includes a will, codicils, etc.; "instrument" signifies the will alone (*Fuller v. Hooper* 2 Ves. sen. 242). See INSTRUMENT; PART; WILL; WRITING.

(4) A testamentary gift to an individual or a class, in like manner as he or they are

entitled under the “will” of A; there “will” means the whole testamentary instruments including codicils (*Pigott v. Wilder* 26 Bea. 92).

(5) A deed of gift executed as a will and proved by extrinsic evidence to be intended to operate after the death of the grantor, is entitled to probate as a will (*Re Slinn* 15 P.D. 156). See further *Milnes v. Foden* 15 P.D. 105.

(6) As to when a will is to be construed as “conditional,” *i.e.* to take effect on the happening or not happening of a certain event, see *Re Spratt* [1897] P. 28, in which case Jeune P., reviewed the previous cases (*Halford v. Halford* [1897] P. 36).

Stat. Def., New Parishes Act 1844 (c. 94), s.7.

TESTAMENTARY CAPACITY. See UNSOUND MIND; UNDUE INFLUENCE.

TESTAMENTARY DISPOSITION. An appointment of benefits under a pension scheme is not a “testamentary disposition” within the meaning of s.1 of the Wills Act 1837 (c. 26) (*Re Danish Bacon Co. Staff Pension Fund Trusts, Christensen v. Arnett* [1971] 1 W.L.R. 248).

TESTAMENTARY DOCUMENT. (1) See *Re Peverett* [1902] P. 205; *Re Barrance* [1910] 2 Ch. 419.

(2) As to the incorporation of documents with, and by, a will, see RATIFY; *Re Smart* [1902] P. 238, and *Eyre v. Eyre* [1903] P. 131, both cited RATIFY.

See TESTAMENTARY INSTRUMENT.

TESTAMENTARY ESTATE. This phrase in a gift of “personal and testamentary estate” carries the realty, as otherwise it would be inoperative (*Smith v. Coffin* 2 Bl. H. 444; *Roe d. Penwarden v. Gilbert* 3 Brod. & B. 85; *Doe d. Evans v. Walker* 15 Q.B. 28; 2 Jarm. (8th ed.) 971). In this last case, Campbell C.J., said, “I think the words ‘my testamentary estate’ mean to include all that I can dispose of. They are *prima facie* sufficiently large to carry both the realty and personalty.”

See ESTATE.

TESTAMENTARY EXPENSES. (1) “Testamentary expenses” are those which are incident to the proper performance of the duty of an executor (*Sharp v. Lush* 10 Ch. D. 468; see hereon *Brougham v. Poulett* 19 Bea. 134; *Re Young* 44 L.T. 499), including the probate duty (*Davies v. Fowler* L.R. 16 Eq. 308), and (possibly) estate duty when it is the substitute for probate duty, *i.e.* so far as personal estate is concerned (*Re Clemow* [1900] 2 Ch. 182; *Re Treasure* [1900] 2 Ch. 648; *Re Fearnside* [1903] 1 Ch. 250; *Re Trenchard* [1905] 1 Ch. 82, cited ANNUITY; and *per Parker J.*, in *Re Hadley* 77 L.J. Ch. 667, and see this last case on appeal [1909] 1 Ch. 20, cited AS SUCH); *secus*, of estate duty in respect of real estate (*Re Palmer* [1900] W.N. 9; *Re Sharman* [1901] 2 Ch. 280; but see *Re Pullen* [1910] 1 Ch. 564, cited MARSHALL); nor is estate duty, even as regards personalty, included in “testamentary expenses,” where the executors are not the parties accountable for the duty (*Re Dixon* [1902] 1 Ch. 248), or as regards the unappointed whole or part of a fund subject to a general power (see *Porte v. Williams* [1911] 1 Ch. 188); or as regards a *donatio mortis causa* (see *Re Hudson* [1911] 1 Ch. 260); or as regards a legacy so far as it is payable out of the proceeds of real estate (see *Re Spencer Cooper* [1908] 1 Ch. 130). The phrase does not include the costs of a transfer of mortgage (*Sewell v. Bishopp* 62 L.J. Ch. 615).

(2) A direction to pay “testamentary expenses” out of residue or other special

fund, did not amount to an “express provision” exonerating the fund from settlement estate duty, under s.19, Finance Act 1896 (c. 28) (*Re King* [1904] 1 Ch. 363; *Re Lewis* [1900] 2 Ch. 176, cited EXPRESS); *secus*, where the direction was to pay “testamentary expenses and duties,” for “duties” covered both the estate duty and the settlement estate duty (*Re Pimm* [1904] 2 Ch. 345, cited DUTIES).

(3) The expression “testamentary expenses” in a will was held not to include estate duty payable under s.35 of the Australian Estate Duty Assessment Act: see *Shelley v. N.S.W. Institution for the Deaf* [1919] A.C. 650, cited DIFFERENT. See also *Re Goetze* [1949] Tas. S.R. 131.

(4) A testatrix bequeathed several legacies and directed her executors to pay “testamentary expenses including death duties.” It was held that the legatees were not entitled to have the duties payable under s.58(2), Finance Act 1910 (c. 35), discharged out of the residue: see *Re Massey* 90 L.J. Ch. 40.

(5) A direction in a will to executors to pay testamentary expenses out of a mixed fund of real and personal estate does not affect the position that legacies payable out of that fund must, so far as they are payable out of the real estate, bear a rateable proportion of estate duty (*Re Owers* [1941] Ch. 17).

(6) The costs of all proper parties to proceedings for determining the scope of, or ascertaining the persons entitled to, a gift, are “testamentary expenses,” especially when the difficulty arises from the language of the will (*Morrell v. Fisher* 4 D.G. & S. 422; *Re Groom* [1897] 2 Ch. 407; *Re Baumgarten* 82 L.T. 711); but generally the costs of ascertaining the person entitled to a legacy, etc., are payable thereout (R.S.C., Ord. 65, r. 14(b); *Re Lycett* 13 T.L.R. 373; see also *Re Whittaker* [1911] 1 Ch. 214); yet the discretion of the court has not been taken away by that rule, when testamentary expenses are provided for (see *Re Vincent* [1909] 1 Ch. 810).

(7) The costs of an administration action are “testamentary expenses” (*Miles v. Harrison* 9 Ch. 316; *Harloe v. Harloe* L.R. 20 Eq. 471, in which last case Hall V.-C., refused to follow *Gilbertson v. Gilbertson* 34 Bea. 354, and *Stringer v. Harper* 28 L.J. Ch. 643; *Miles v. Harrison* and *Harloe v. Harloe* were followed in *Sharp v. Lush* sup., *Penny v. Penny* 11 Ch. D. 440, and in *Re Chapman* 71 L.T. 778; see also *Lees v. Lees* Ir. Rep. 6 Eq. 159; *Browne v. Groombridge* 4 Mad. 495, on which see *Kilford v. Blaney* 31 Ch. D. 56); but where such costs are increased by the administration of real estate such increase is borne by the real estate (*Patching v. Barnett* 51 L.J. Ch. 74, applied in *Re Betts* [1907] 2 Ch. 214; *Re Copland* 44 W.R. 94; but see *Re Middleton* 50 L.J. Ch. 525). But the decision of Fry J., in *Re Middleton* was reversed, and *Patching v. Barnett* was established, by the C.A. (*Re Middleton* 19 Ch. D. 552), which ruling has not been altered by s.2(3), Land Transfer Act 1897 (c. 65), and the rule remains that the costs of an administration action are “testamentary expenses” and payable out of the personal estate, except so far as they are increased by the administration of real estate, in which case such increase is borne by the real estate (*Re Jones* [1902] 1 Ch. 92; cp. *Dean v. Bulmer* [1905] P. 1, and *Re Vickerstaff* [1906] 1 Ch. 762, both cited ESTATE). See now Administration of Estates Act 1925 (15 & 16 Geo. 5, c. 23), s.34, and *Re Eleanor Taylor's Estate and Will Trusts* [1969] 2 W.L.R. 1371.

(8) So, the costs of a successful opposition to a will (*Re Clemow* sup.), or even of an unsuccessful opposition to a will the proof of which has been established under a compromise, one of the terms of which was that such costs should be paid out of the estate, are “testamentary expenses” (*Brown v. Burdett* 53 L.J. Ch. 56); *secus*, where no such terms have been arranged (*Re Prince* [1898] 2 Ch. 225), except as regards the costs of the executors in upholding the will (*ibid.*). *Semble*, that costs of properly requiring proof of will in solemn form (when only cross-examination and

non-contentiously producing additional evidence is resorted to) would be “testamentary expenses” (*per* Stirling J., *ibid.*).

(9) In *Re Clemow* (sup.) the question arose on a direction in Clemow’s will to pay his “widow’s testamentary expenses”; the widow died intestate; held, that the costs of obtaining letters of administration to her estate were part of her “testamentary expenses,” although there was no testament, for “‘testament’ has ceased to have its purely etymological meaning,” and “testamentary expenses,” in such a direction, means expenses relating to the administration of deceased persons; the widow’s estate being wholly personalty, it was also held that estate duty thereon was also payable by Clemow’s trustees. See further *Re Treasure* [1900] 2 Ch. 648, sup.

(10) By s.125(7), Bankruptcy Act 1883 (c. 52) (see now Act of 1914 (c. 59), s.130(6)), “testamentary expenses incurred in and about the debtor’s estate” by the legal representative of a deceased insolvent debtor, are a preferential debt upon the estate; held, by Judge Holl, at Newcastle-upon-Tyne County Court, that these words include not merely the cost of obtaining probate, but also the reasonable expenses of investigating the position of the debtor’s affairs, and generally of administering his estate prior to the bankruptcy administration order (*Re Turnbull* 29 S.J. 557). The phrase also includes costs properly incurred in an administration action (*Re York* 36 Ch. D. 233; *Re Chapman* 71 L.T. 778, sup.).

(11) Funeral expenses, the ascertaining testator’s debts and their amounts (including rent current at the decease), and the costs of warehousing specific legacies, are “testamentary expenses” (*Sharp v. Lush* 10 Ch. D. 468, sup.). See EXECUTORSHIP EXPENSES. Cp. *Re Michie* 42 Sc. L.R. 386, cited EXPENSES.

(12) Finance Act 1894 (c. 30), s.9(1): see *O’Grady v. Wilmot* [1916] A.C. 231, cited AS SUCH; *Re Morris* [1927] W.N. 146.

(13) “Testamentary expenses” (s.6, Intestates’ Estates Act 1890 (c. 29)) “is merely a slip in draughtsmanship, and really means expenses of administration” (*per* Chitty J., *Re Twigg* [1892] 1 Ch. 579).

(14) Where in a will there was a direction to pay “testamentary expenses” out of residue, it was held that “testamentary expenses” did not include foreign duty on foreign land specifically devised (*Re Mathews’ Will Trusts, Bristow v. Mathews* [1961] 1 W.L.R. 1415).

TESTAMENTARY GUARDIAN. (1) Is a guardian of an infant appointed by will; the need of, and the power of appointing, whom being shown and first enacted by Tenures Abolition Act 1660 (c. 24), which abolished guardianship in chivalry and converted the old tenures into free and common socage (1 Bl. Com. 462). By that statute the power was solely in the father, but the mother, in certain cases, might by deed or will appoint a guardian (s.3, Guardianship of Infants Act 1886 (c. 27)).

(2) As to the powers of a testamentary guardian, see s.9, Tenures Abolition Act 1660 (c. 24), on which see *Re Helyar* [1902] 1 Ch. 391, cited TRUSTEE.

(3) As to his removal, see *F. v. F.* [1902] 1 Ch. 688, and cases there cited.

See INFANT; WARD.

TESTAMENTARY INSTRUMENT. A deed, only to take effect at the death of the creator of the trust thereby declared, was held a “testamentary instrument” within s.7, Legacy Duty Act 1796 (c. 52) (*A.-G. v. Jones* 3 Price 368; but see on this case *Jeffries v. Alexander* 8 H.L. Ca. 611); but a deed settling property on the settlor for life, and after his decease to others, is not a “testamentary” document, although it contains a power of revocation (*Thompson v. Browne* 3 My. & K. 32).

See INSTRUMENT; TESTAMENTARY DOCUMENT.

TESTAMENTARY MATTER. See MATTER.

TESTAMENTARY POWER. See POWER.

TESTATOR. (1) "Testator" (s.2, Real Estates Charges Act 1867 (c. 69)) had its general meaning, and applied to any deceased person who had made a will; even where such will had not disposed of the testator's beneficial interest in the lands upon which a lien for unpaid purchase money existed (*Dowdall v. M'Cartan* 5 L.R. Ir. 313, 642).

(2) "Testator's reasons" (Inheritance (Family Provision) Act 1938 (c. 45), s.1(3)) do not include mere statements of intention (*Re Pugh* [1943] Ch. 387).

(3) "Testator's estate" (Inheritance (Family Provision) Act 1938 (sup.), s.2(1)). No court would describe as a "testator" a person in respect of whom there has been a grant of letters of administration which has not been displaced (*Re Bidie* [1949] Ch. 121). See amendment contained in Intestates' Estates Act 1952 (c. 64), Sched. 4.

See INTESTATE.

TESTATUM. The testatum clause of a deed is that beginning "Now this indenture witnesseth"; the subsequent like clauses, when there are more than one, are also testatum clauses. Its office is to witness to the operative act to be effectuated by the deed.

TESTE. (1) Its *teste* is "that part of a writ wherein the date is contained" (Jacob). See hereon 1 Bl. Com. 179, 3 *ibid.* 274.

(2) A will is proved (1) in common form by affidavit, or (2) *per testes*, *i.e.* in solemn form by calling the witnesses before the court (2 Bl. Com. 508); see hereon Wms. Ex. (12th ed.) 209, 211; COMMON FORM BUSINESS.

TESTIMONIUM. The testimonium clause of a document is that at its end beginning with "in witness," or "as witness." See hereon Co. Litt. 6 a.

TESTIMONY. (1) "Testimony" in s.6 of the Bastardy Act 1845 (c. 10) has been held to cover documentary evidence (*Jeffery v. Johnson* [1952] 2 Q.B. 8).

(2) "Testimony" (Foreign Tribunals Evidence Act 1856 (c. 113), s.1) is restricted to testimony which is in the nature of proof for the purpose of the trial (including written testimony), and does not extend to evidence which may be used in proceedings for inspection and discovery before trial (*Radio Corporation of America v. Rauland Corporation* [1956] 1 Q.B. 618.)

TESTING. See TEST.

THAINUS. See TAINI.

THAMES. (1) "River Thames" (Metropolis Management Act 1879 (c. cxcviii)): see s.2; BANK; *London County Council v. London, Brighton & South Coast Railway* [1906] 2 K.B. 72, cited ALTERATION, and FLOOD.

(2) In *Leary v. Steeves* (*The Times*, December 15, 1881), where the owners of a bill of lading had the right to intercept the ship "at the mouth of the Thames," the

jury found that the "mouth of the Thames" included East Oaze Buoy, off the Mouse Light; the witnesses for the plaintiffs (in whose favour the verdict was found) stated that, in their opinion, "mouth of the Thames" was a considerable space of water, the eastern limit of which was between Shoeburyness and Sheerness; one witness gave the western limit as a line between Foulness and Warden Point.

(3) "The Thames is a port or place where pilotage is compulsory" (*per* Evans P., in *The Umsinga* 80 L.J.P. 96, following *The Hankow* 4 P.D. 197, cited PARTICULAR PROVISION.

Stat. Def., Thames Conservancy Act 1894 (c. clxxxvii), s.3.

"Bed of the Thames": see BED.

THANE. See TAINI; Cowel, *Thane or Theyne*.

THAT IS TO SAY. (1) "'That is to say' is the commencement of an ancillary clause which explains the meaning of the principal clause. It has the following properties: (1) it must not be contrary to the principal clause; (2) it must neither increase nor diminish it; (3) but where the principal clause is general in terms it may restrict it; see this explained with many examples, *Stukeley v. Butler* Hob. 171; see also *Harrington v. Pole Dy.* 77 b. pl. 38" (Elph. 622). But see *Bradley v. Newcastle Pilots* 23 L.J.Q.B. 35.

(2) A policy on a corn dealer's "stock in trade, 'consisting of' corn, seed, hay, straw, fixtures, and utensils in business," was confined to these enumerated things, and did not extend to hops and matting, although such latter things would, but for the restrictive words, have come within "stock in trade" (*Joel v. Harvey* 29 L.T.O.S. 75).

(3) In *Gover v. Davis* (30 L.J. Ch. 505), a bequest of "also the whole of my property and effects, 'that is to say' my box, clothing, and bedding, etc., etc.," was held to pass a reversionary interest in a residuary estate; and in like manner *Wood V.-C.*, held that the wide generality of "my personal property" was not cut down by being immediately followed by "consisting of money and clothes" (*Dean v. Gibson* L.R. 3 Eq. 713).

See NAMELY; COMPRISING; CONSISTING; VIDELICET.

THAT LAND. (Deer Act 1963 (c. 36), s.10(3)(b)). "That land" means the land on which the shooting takes place and where the damage to crops was on adjoining land there was no defence under this section (*Traill v. Buckingham* [1972] 1 W.L.R. 459).

THAT PART. "Attributable to that part." See ATTRIBUTABLE.

THE. (1) A requirement in a Ministry of Health Circular that notice of requisitioning should be served on the owner "or the agent" meant the owner's estate agent and not, *e.g.* the owner's husband (*Patchett v. Leathem* 65 T.L.R. 69).

(2) "The children," in a testamentary gift, construed as the existing children: see *Re Haseldine* 31 Ch. D. 511, cited CHILD.

(3) A reservation of full and free liberty to take "the coal," etc., is not exclusive (*Sutherland v. Heathcote* [1892] 1 Ch. 475, cited LIBERTY OF WORKING).

(4) "Where the contributions . . . have been made" (Local Government Act 1929 (c. 17), s.124(1)) as not meaning, necessarily, "where 'all' the contributions have been made": see *Gissing v. Liverpool Corporation* [1935] Ch. 1.

(5) "The credit," in a guarantee, points to a definite credit—"something ascertained and known" (*per* Bramwell B., *Broom v. Batchelor* 25 L.J. Ex. 299; but the majority of the court was against him in the conclusion, partly led up to by the dictum just cited).

(6) Costs out of "the estate," in an order by the House of Lords in an appeal in a probate action: held to mean, only the personal estate, as it was only over that that the court appealed from had jurisdiction (*Charter v. Charter* 45 L.J. Ch. 705). But, possibly, that ruling may have been varied by Pt. I, Land Transfer Act 1897 (c. 65).

(7) "The justice," to hear a summons under s.31, Vaccination Act 1867 (c. 84), did not need to be the same justice who signed the summons (*Southcombe v. Yeovil* [1897] 1 Q.B. 343).

(8) "The principal mansion house": see *Gilbey v. Rush* [1906] 1 Ch. 11, cited CONSENT. See Settled Land Act 1925 (c. 18), s.65.

(9) "The property" in goods does not pass to an indorsee in blank of a bill of lading (who merely takes as a pledgee), so as to render him liable for freight under s.1, Bills of Lading Act 1855 (c. 111); nor (*semble, per* Lord Blackburn) would any pledgee or mortgagee be so liable (*Sewell v. Burdick* 10 App. Ca. 74). See also *Brandt v. Liverpool, etc., Co.* [1924] 1 K.B. 575.

(10) "The property," when not a sufficient description in a vendor and purchaser contract: see *Shardlow v. Cotterill* 20 Ch. D. 90, cited PURCHASED; *McMurray v. Spicer* L.R. 5 Eq. 527; *secus, Plant v. Bourne* [1897] 2 Ch. 281.

(11) "The right to any relief claimed" (the old R.S.C., Ord. 16, r. 1, and County Court Rules 1889, Ord. 3, r. 1—see now R.S.C., Ord. 15, r. 4 and County Court Rules 1936, Ord. 5, r. 1) meant that several plaintiffs might only be joined when claiming the same relief (*Smurthwaite v. Hannay* [1894] A.C. 494; *Carter v. Rigby* [1896] 2 Q.B. 113). See hereon *Compania, etc. v. Houlder* [1910] 2 K.B. 354, and cases therein cited.

(12) "The said facts" (pleas of fair comment in libel action): see *The Aga Khan v. The Times Publishing Co.* [1924] 1 K.B. 675. See also *Kemsley v. Foot* [1952] A.C. 345; Defamation Act 1952 (c. 66), s.6.

(13) Legacy of "the" stocks, shares, and securities particularised in schedule, held to be specific and not general legacies: see *Re Hawkins* [1922] 2 Ch. 569.

(14) "The lottery" (Betting and Lotteries Act 1934 (c. 58), s.22(1)). The use of the word "the" in this context meant that the printing of lottery tickets which did not refer to any specific lottery was not an offence (*McKay v. Gillies* [1956] 1 W.L.R. 1402).

"The exclusive right": see EXCLUSIVE RIGHT.

"The light": see LIGHT.

"The minister": see MINISTER.

See A; FISHERY; RIGHT OF SALE.

THEATRE. (1) "Theatres" (s.72(4), Licensing Act 1872 (c. 94)) did not include a music hall (*R. v. Inland Revenue Commissioners* 21 Q.B.D. 569). See further *Fredericks v. Howie* 31 L.J.M.C. 249, cited PLACE, and TENEMENT).

(2) In *Ritchie v. Scottish Cinema & Variety Theatres Ltd.* 1929 S.C. 350, it was held that a picture house was not a "theatre" for the purpose of building restrictions applicable to a theatre.

Stat. Def., Cinematograph Films Act 1948 (c. 23), Sched. 2, para. 44; Shops Act 1950 (c. 28), s.74; Theatres Trust Act 1976 (c. 27), s.5.

See PLACE; STAGE PLAY.

THEFT. (1) “ ‘Theft’ is a wrongfull taking away of another mans goods, but not from his person, with a mind to steale them against his will whose goods they were” (Termes de la Ley, *Larcenie*): see further TAKE AND CARRY AWAY. The taking must be *animo furandi*, “or, as the civil law expresses it, *lucri causa*” (4 Bl. Com. 232). For an example of what is “not” such a taking, see *R. v. Bailey* L.R. 1 C.C.R. 347, and of what “is,” see *R. v. Middleton* L.R. 2 C.C.R. 38. See further *R. v. Tideswell* [1905] 2 K.B. 273. See Larceny Act 1916 (6 & 7 Geo. 5, c. 50), s.1.

(2) As to the meaning of “theft” in an insurance policy, see *Lake v. Simmons* [1927] A.C. 487.

(3) “Theft or dishonesty committed by a servant”: for the meaning of these words in an insurance policy, see *Hurst v. Evans* [1917] 1 K.B. 352.

(4) As to the exception of theft by members of the assured’s household, business staff, etc., in a policy of insurance against theft, see *Saqui v. Stearns* 80 L.J.K.B. 451.

(5) “In the course of furtherance of theft” (Homicide Act 1957 (c. 11), s.5(1)). The “course” of theft is begun when perpetration is begun—it covers the period of attempt of the crime as well as the crime. If a burglar is interrupted in the course of perpetration and murders in order to get away, it is still murder done in the course of theft (*H.M. Advocate v. Graham* 1958 S.L.T. 167).

Stat. Def., Theft Act 1968 (c. 60), ss.1, 24(4); Limitation Act 1980 (c. 58), s.4(5).

Cp. EMBEZZLE; PETTY LARCENY; RAPINE; ROBBERY. See further THIEF; THIEVES.

THEFT-BOTE. See BOTE.

THEIR. (1) In *Boreham v. Bignall* (19 L.J. Ch. 461), a substitutional gift to “their children” was held by Wigram V.-C., as conclusively showing that one wife only of the first beneficiary was in the contemplation of the testator, and that that wife must have been the one living at the date of the will. See WIFE. See also AT.

(2) A gift to “their children” of a husband and wife, means the children of both, so that children of the surviving spouse by a second marriage are not included (*Whittet’s Trustees v. Mitchell* 29 Sc. L.R. 834).

(3) “Their children”: held to mean “their respective children” (*Arrow v. Mellish* 1 D.G. & S. 355; *Wills v. Wills* L.R. 20 Eq. 342, cited AT THEIR DEATH).

(4) In a covenant by two or more for themselves, “their executors, administrators, and assigns,” the word “their” is necessarily read distributively, because the parties do not anticipate that they will have the same executors, etc.; but the word will not convert a covenant otherwise joint into a separate covenant (*Whyte, or White v. Tyndall* 13 App. Ca. 263).

(5) “Their respective issue”: see *Stewart’s Trustees v. Walker* 42 Sc. L.R. 426.

(6) “Should require for their manufacture”: see *Associated Portland Cement Manufacturers v. Tolhurst* [1902] 2 K.B. 660, cited ASSIGNS.

“Their lives”: see JOINT LIVES.

THELLUSSON’S ACT. Accumulations Act 1800 (c. 98). This Act does not derive its popular name from a legislator, but because its need was shown by the eccentric and impolitic accumulation of income of the estate of a deceased person which the skill of Mr. Thellusson’s professional advisers enabled him, as the law then stood, to legally direct by his will: see ELDEST.

See LOUGHBOROUGH’S ACT.

THEM. “Them” refers to its last antecedent; and for an application of that rule, see *Gray v. Garman* 12 L.J. Ch. 259.

THEME. “ ‘Theme’ (sometimes written *theame* corruptly) is an old Saxon word, and signifieth *potestatem habendi in nativos sive villanos, cum eorum sequelis, terris, bonis et catallis*. But *teame*, sometime corruptly written *theame*, is of another signification; for it is also an old Saxon word, and signifieth where a man cannot produce his warrant of that which hee bought according to his voucher” (Co. Litt. 116 a). See further Cowel, *Teame*.

Cp. TEAME.

THEN. (1) “If property be given upon certain events to such persons as shall then be next of kin or relations of the testator, the persons standing in that relation ‘at the period in question,’ whether so or not at the death of the testator, are, upon the terms of the gift, entitled. Where the gift is not to those who will then be, but to those who will (or would) then be ‘entitled’ as, next of kin by statute, the word ‘then’ will be understood as referring to the period when they will be entitled in possession. The persons to take will be not those who would have been entitled if the testator had then died, but those who would then be entitled if the testator, when he died, had died intestate” (3 Jarm. (8th ed.) 1642).

(2) The cases cited in Jarman for that proposition were thus dealt with by Thesiger L.J., in *Mortimore v. Slater* (7 Ch. D. 329; affirmed in House of Lords, *nom. Mortimore v. Mortimore* 4 App. Ca. 448): “The cases seem to me to divide themselves into three classes. The first of those classes is the one where the word ‘then,’ as an adverb of time, is attached to the description of the class; and in that case, as in *Wharton v. Barker* (4 K. & J. 483, followed in *Valentine v. Fitzsimmons* [1894] 1 I.R. 93, and in *Hutchinson v. National Refuges for Homeless and Destitute Children* [1920] A.C. 794, cited NEXT-OF-KIN), and *Long v. Blackall* (3 Ves. 486), it was decided that the word ‘then’ imported the time at which the class so described is to be ascertained. *Wheeler v. Addams* (17 Bea. 417), is to a certain extent an exception to that rule; but I think that may be explained, because we find that in that case there is a reference in the limitation to one of the persons who had been a tenant for life before the limitation came into force.

(3) “The second class of cases consists of those where words of futurity, but without the adverb of time, are attached to the description of the class, and in that class of cases we find no distinction drawn, but in every one of them we find that it was held that the words must speak from the time of the testator’s death. The cases cited on that point have been *Holloway v. Holloway* (5 Ves. 399), and *Doe v. Lawson* (3 East, 292).

(4) “The third class of cases is that where the word ‘then,’ the adverb of time, is used, but where you find it used not in connection with the description of the class but in connection with the time at which the estate is to come into being. In that class of cases also, without any exception, we find it decided that you are to look at the class at the time of the testator’s death. That is to be found in *Cable v. Cable* (16 Bea. 507), in *Bullock v. Downes* (9 H.L. Ca. 1), and in *Day v. Day* (4 Ir. Rep. Eq. 385); and it is to be observed that in all these cases we do not find that any distinction is drawn from the use of the additional words, ‘as if he had died intestate,’ but the point which has been looked at by the learned judges who decided those cases has been whether the word ‘then’ is attached to the description of the class, or to the time when the estate is to come into possession.”

(5) “Moreover, ‘then’ has more meanings than one, each equally common; it

may mean 'at that time' or 'in that case'; and, unless the latter meaning be excluded by the context, it will be adopted rather than construe 'next of kin according to the statute' (the statute being expressly referred to), as meaning something different from what the statute says it means" (3 Jarm. (8th ed.) 1642, and cases there cited). The judgment of Thesiger L.J., in *Mortimore v. Mortimore* in 4 App. Cas. 448, was discussed in *Lucas-Tooth v. Lucas-Tooth* [1921] 1 A.C. 594.

(6) "Then," used twice in the same sentence, construed in the first instance as pointing to the event, and in the second as an adverb of time (*Gill v. Barrett* 29 Bea. 372).

(7) "Then," construed as an adverb of time, not of contingency (*Baker v. Lucas* 1 Molloy, 481).

(8) "Then," as an adverb of time, generally refers to the last antecedent (*Archer v. Jegone* 6 L.J. Ch. 340; *Palmer v. Orpen* [1894] 1 I.R. 32; *Re Dundalk & Ennis-killen Railway* [1898] 1 I.R. 232). See hereon *Heasman v. Pearse* 7 Ch. 285, cited SUCH. See *Griffiths v. Eccles Provident Society* [1912] A.C. 483, cited NOMINATE. See *Humfrey v. Humfrey* 31 L.J. Ch. 622; *Blight v. Hartnoll No. 2*, 19 Ch. D. 294; *Pinder v. Pinder* 29 L.J. Ch. 527; *Druitt v. Seaward* 31 Ch. D. 234; *Re Milne* 56 L.J. Ch. 543; *Boraston's Case* 3 Rep. 19.

(9) Where a will specified certain trusts, each of which was to operate if the preceding one failed, and then said: "and should the trust fund not vest as aforesaid then upon trust for the next of kin of the settlor," the word "then" was to be construed as referring to an event and not as an adverb of time (*Falkiner v. Commissioner of Stamp Duties* [1973] A.C. 565).

(10) A testatrix directed that legacies be paid to certain named charities and continued: "then divided among the following [various other named charities]." The words "then divided" were held to refer to the division of residue after the legacies had been paid (*McAulay's Trs. v. Royal National Lifeboat Institution* 1961 S.C. 307).

(11) "Then" may be used as equivalent to "further," e.g. when there is a testamentary direction for payment of debts, and "then" a demise of lands (*Willan v. Lancaster* 3 Russ. 108).

(12) "My 'then' next of kin": see *Re McFee* 79 L.J. Ch. 676, cited NEXT OF KIN.

(13) "Then," in a pleading, generally means "at that time" (see *per Bosanquet J.*, *Thornton v. Jenyns* 1 M. & G. 184, 190); but sometimes it is ambiguous (*Stead v. Poyer* 14 L.J.C.P. 251).

(14) The "then" value of a tramway undertaking, under Tramways Act 1870 (c. 78), s.43: see *Re Oldham, Ashton & Hyde Electric Tramway and Ashton Corporation* [1921] 3 K.B. 511. See *London Street Tramways Co. v. London County Council* [1894] A.C. 456, cited TRAMWAY.

(15) "Then and there" refers to the time and place last before mentioned (*Garret v. Johnson* 1 Raym. Ld., 576; see hereon *Davies v. The King* 10 B. & C. 89). Cp. *R. v. Brownlow* 3 P. & D. 52, cited INSTANTLY; *Derecourt v. Corbishley* 5 E. & B. 188, cited THEREUPON.

THEN IN BEING. See *Leader v. Duffey* 13 App. Ca. 294.

THEN LIVING. (1) "Where life interests are bequeathed to several persons in succession, terminating with a gift to a class of objects then living, the word 'then' is held to point to the period of the death of the person last named (whether he is or is not the survivor of the several legatees for life), and is not considered as referring to the period of the determination of the several prior interests" (3 Jarm. (8th ed.)

1670, and cases there cited; see further *Watson Eq.* (2nd ed.) 1224–5, 1377; *Britnell v. Walton* [1869] W.N. 238; *Heasman v. Pearse* 7 Ch. 275, cited *SUCH*; *Cooper v. Macdonald* L.R. 16 Eq. 258).

(2) “Other children then living,” may be modified by a subsequent proviso that grandchildren should take the share “the parent would have taken if living”: see *Re Blantern* [1891] W.N. 54.

(3) “Then living,” as regards the rule against perpetuities: see *Re Wood* [1894] 3 Ch. 381.

See *LIVING*; *THEN*.

THEN SURVIVING. (1) Burgesses “at that time surviving and remaining,” to elect to vacancies in a borough council granted by charter; held, to mean burgesses for the *TIME BEING* (*R. v. Devonshire* 1 B. & C. 618). See *Re Coulden* [1908] 1 Ch. 320, cited *ISSUE*.

(2) “I declare that if any daughter of mine shall die without lawful issue her surviving her share shall thereupon devolve upon my other children then surviving.” The phrase “then surviving” in the declaration which was contained in a will referred to the time of the death of the child (*Re Williams’ Will Trusts* [1949] 2 All E.R. 11).

THENCEFORTH. (1) “Thenceforth,” after an event, has the same meaning as “from and after” (*Farrer v. Billing* 2 B. & Ald. 177); and it, or its equivalent “thenceforward,” will not have a retroactive operation (*R. v. Madeley* 15 Q.B. 49).

(2) “Shall thenceforth cease and determine”: see *Re Chapman* [1904] 1 Ch. 431, cited *FORFEITURE*.

THENECIUM. A hedgerow or dike-row (*Cowel*).

THEOLONIO. A toll; see hereon *Holcroft v. Heel* 1 B. & P. 400, cited arg. *Egremont v. Saul* 6 L.J.K.B. 205; cp. *CUSTOM*. “Theolonium is a barbarous word” (*Hill v. Priour* 2 Show. 35).

THERE. “Then and there”: see *THEN*.

THERE OR NEARBY. See *NEARBY*.

THEREABOUTS. (1) By a charterparty a defendant undertook to load a vessel “of the measurement of 180 to 200 tons or thereabouts”; held, he was not exonerated because the vessel happened to be 257 tons burthen (*Windle v. Barker* 25 L.J.Q.B. 349). See further *MORE OR LESS*.

(2) “Or thereabouts,” when qualifying an estimated quantity of mines, ought to be construed in the same way as if applied to the surface (*Davis v. Shepherd* 1 Ch. 410). See *MORE OR LESS*.

(3) A bequest of “£3000 or thereabouts,” to be raised by accumulating income, is not void for uncertainty (*Oddie v. Brown* 28 L.J. Ch. 542; see thereon 1 Jarm. (8th ed.) 475 *et seq.*).

See *SAY*; *THEREBY*.

THEREAFTER. (1) Mortgagee “always thereafter” to be employed: see *Bradley v. Carritt* [1903] A.C. 253, cited *MORTGAGE*.

(2) “Thereafter made”: see *Re Manning* 30 Ch. D. 480, cited *MADE*.

(3) A sum of money was ordered to be paid on February 1 and a similar sum “per month thereafter.” Held, that the word “thereafter” referred to February 1 and not to the month of February. Consequently the latest day for subsequent payments was the first day of each calendar month (*Re a Debtor* (No. 266 of 1940) [1940] Ch. 470).

See **HEREAFTER**; **SHALL**.

THEREAFTER TO BE BORN. A testamentary gift to a class composed of persons who may be living at a future event, or “thereafter,” or “afterwards” to be born, is an executory gift, and not a contingent remainder, so that all the members of the class, whenever born, are entitled to share (*Miles v. Jarvis* 24 Ch. D. 633, following *Re Lechmere and Lloyd* 18 Ch. D. 524, and rejecting *Brackenbury v. Gibbons* 2 Ch. D. 417). In *Dean v. Dean* ([1891] 3 Ch. 150), Chitty J., also followed, *Re Lechmere and Lloyd*, the words before him being, a devise to A for life, and on his death to such of his children then living “as either before or after” his death should attain 21.

THEREBY. (1) An attesting witness to a will loses a legacy “thereby” given him (s.15, Wills Act 1837 (c. 26)); *semble*, that does not apply to a share in a SECRET TRUST not appearing on the face of the will (*O’Brien v. Condon* [1905] 1 Ir. R. 51, differing from *Re Fleetwood* 15 Ch. D. 594); see also *Blackwell v. Blackwell* [1929] A.C. 318.

(2) “Or thereby,” is used in Scottish conveyancing descriptions of quantities in much the same sense as “or thereabouts” (see hereon *Hetherington v. Galt* 42 Sc. L.R. 571).

“Thereupon and thereby”: see **THEREUPON**.

THEREFROM. “Tax . . . shall be charged in respect of any office or employment on emoluments therefrom” (Income Tax Act 1952 (c. 10), s.156, now Income and Corporation Taxes Act 1970 (c. 10), s.181). Shares transferred to a person in consideration of his “agreeing to serve the company” were not emoluments “from” the office or employment (*Pritchard v. Arundale* [1972] Ch. 229).

THEREIN. “Therein named”: see *Re Browne* [1903] 1 Ch. 188, cited **NAMED**.

THEREON. “Thereon” (Rating and Valuation (Apportionment) Act 1928 (c. 44), s.2(2)). In the first part of this definition of agricultural buildings the word “thereon” refers back to the land as opposed to the buildings. In the second part of the definition, which covers market gardens, the word means on the market garden as a whole whether inside or outside the buildings (*Perrins v. Draper* [1953] 1 W.L.R. 1178; *Eastwood v. Herrod* [1971] A.C. 160).

THEREINBEFORE. See **HEREINBEFORE**.

THEREOF. (1) “According to the ordinary rule of grammatical construction, the word ‘thereof’ must apply to the last antecedent” (*per Cockburn C.J.*, *Perry v. Davis* 3 C.B.N.S. 776). See hereon *Re Phillips* 66 L.J. Ch. 714; *Llewellyn v. Glamorgan Vale Railway* [1898] 1 Q.B. 473, cited **OWNER**.

(2) “For the duration thereof”: see *National Telephone Co. v. Kingston-upon-Hull* 89 L.T. 291.

THERETO. (1) "Thereto" (s.3, Prescription Act 1832 (c. 71)) does not refer to "dwelling-house," etc., but to "access and use of light"; and "the right thereto," in the section, means "the right to the same access and use of light to and for any dwelling-house, workshop, or other building" (*per* Fry L.J., *Scott v. Pape* 31 Ch. D. 554). See thereon *Greenwood v. Hornsey* 33 Ch. D. 471.

(2) "With respect thereto" (New Towns Act 1946 (c. 68), Sched. I, para. 3); this phrase limited the scope of the public local inquiry held under para. 3 because it meant "with respect to the objections" (*Franklin v. Minister of Town & Country Planning* [1948] A.C. 87).

"Thereto adjoining": see **ADJOIN**.

"Thereunto belonging": see **BELONGING**; **ENJOYED**.

THERETOFORE. (1) See *R. v. Great Western Railway* 28 L.J.M.C. 246; *Portsmouth v. Smith* 13 Q.B.D. 184; 10 App. Ca. 364.

(2) "Persons intending to keep inns theretofore kept by other persons" (s.4, Ale-house Act 1828 (c. 61), with which s.14 is to be read) meant "theretofore," not in the sense of "at 'any' time before," but in the sense of "immediately preceding," and that the premises had been "kept" as an inn (see **KEEP**); therefore, where premises had been licensed and the licence had been annually renewed but the premises had not been "kept" as an inn for 13 years and had been used as a draper's shop; held, that the justices had no power to license under s.4 or to transfer under s.14 (*R. v. Cotham* [1898] 1 Q.B. 802, cited **RENEWAL**); but a "mere temporary cessation of the sale of intoxicating liquor was not a conclusive bar to justices" under either section (*per* Alverstone C.J., *Wilson v. Crewe Justices* [1905] 1 K.B. 491, which case see as to what would satisfy "kept" in this connection; cp. *South-end-on-Sea v. White* 83 L.T. 408, cited **OCCUPATION**).

"Theretofore usually demised": see **USUALLY**.

THEREUNTO. See **THERETO**.

THEREUPON. (1) It is as nearly accurate as possible to say that, in its primary sense, "thereupon" is the equivalent of "immediately" (*Vaughan v. Watt* 9 L.J. Ex. 272). But "whereupon" confers a right without involving the idea of any time within which it is to be claimed or enforced (*Burslem v. Attenborough* L.R. 8 C.P. 122).

(2) "Thereupon defendant gave plaintiff in charge of a policeman," in a pleading; held, that "thereupon" was equivalent to "then and there" (*Derecourt v. Corbishley* 5 E. & B. 188; see further **THEN**); but, in another context, "thereupon" was regarded as the equivalent of "in consequence of" (*Groux Co. v. Cooper* 8 C.B.N.S. 814).

(3) "Thereupon and thereby": see these terms distinguished, *Atkinson v. Raleigh* 3 Q.B. 79.

See **UPON**.

THEREWITH. (1) Land occupied "together with" a house, etc. (s.25, Representation of the People Act 1832 (c. 45)), or house, etc., with any land "occupied therewith" (s.27, *ibid.*); "therewith," in that connection, had reference more to time than to locality; therefore, land at a distance from, if occupied at the same time as and used with, a house, etc., could be estimated for the purpose of making up a £10 borough qualification, provided the land and building were so occupied by the claimant during the qualifying year "as owner," or "as tenant under the same

landlord" (*Capell v. Aston* 8 C.B. 1; *Collins v. Thomas* 22 L.J.C.P. 38; *Saunders v. Searson* 50 L.J.C.P. 117).

(2) "Lands held therewith" (s.49, Lands Clauses Consolidation Act 1845 (c. 18)): see *Holt v. Gas Light & Coke Co.* L.R. 7 Q.B. 728.

(3) A solicitor's office, though structurally separated from, yet within the curtilage of, his dwelling-house, was "therewith occupied" within the schedule to House Tax Act 1851 (c. 36); and, though used solely for his business, yet was not a "tenement," so as to be entitled to exemption under s.13(2), Customs and Inland Revenue Act 1878 (c. 15) (*Nichols v. Malim* [1906] 1 K.B. 272). See hereon *Russell v. Coutts* 19 Sc. L.R. 197, cited TENEMENT.

(4) "Together with all ways, etc., and appurtenances . . . therewith used, possessed, occupied, or enjoyed, or accepted reputed taken or known as part parcel or member thereof, or as appurtenant or belonging thereunto," "are words quite large enough to convey the adjoining road *usque ad medium filum viæ*" (*per Willes J., Simpson v. Dendy* 8 C.B.N.S. 468).

"Ways now used therewith": see WAYS.

See RIGHT; TOGETHER WITH; WITH.

THERM. See Gas Act 1972 (c. 60), s.48; Gas Levy Act 1981 (c. 3), s.7.

THESE PRESENTS. A clause in a mortgage empowered the mortgagee (who was a solicitor) to charge for all business done by him "in or about these presents"; held, that this did not enable him to charge for business relating to the mortgaged property done by him subsequent to the mortgage; " 'these presents' mean, not the property, but 'this deed' " (*per Kay J., Field v. Hopkins* 44 Ch. D. 529). See Mortgagee's Legal Costs Act 1895 (58 & 59 Vict., c. 25), cited PROFIT.

THIEF. (1) "A person who steals and is prepared to steal to commit the crime of larceny, should opportunity offer. Persons who commit frauds of other kinds are not thieves" (*per Mayo J., in Dias v. O'Sullivan* [1949] A.L.R. 586, 591).

(2) To call a man a "thief" is slander, and needs no innuendo (*Blumley v. Rose* 1 Roll. Ab. 73; *Slowman v. Dutton* 10 Bing. 402; but the context or circumstances may show that it was a mere vague word of abuse not actionable.

Stat. Def., Theft Act 1968 (c. 60), ss.1, 24(4).

See FELON; REPUTED THIEF; THEFT.

THIEVES. (1) The exception of "thieves" in a bill of lading, generally means the same as in a marine insurance, and only applies to thieves "external" to the ship (*Taylor v. Liverpool & Great Western Steam Co.* L.R. 9 Q.B. 546). In that case Archibald J., said (43 L.J.Q.B. 208), "No doubt these words, 'pirates, robbers, thieves,' were copied originally from the ordinary policy of insurance, and in that policy the word 'thieves' refers only to a theft with violence; and as it is capable of that meaning so also it is capable of another meaning, that is, as meaning a *furtum* merely, a furtive theft. If it has that ambiguous meaning, we must consider the meaning it has finally acquired in the ordinary policy of insurance; and the defendants (the shipowners) not having made it clear that this is an exception for their benefit, we must hold that it has the more restrictive meaning as in the policy of insurance." Even if the exception is "thieves 'of whatever kind,' whether on board or not, or by land or sea," it will not relieve the shipowner from liability for thefts committed by servants of the ship, e.g. the stevedore's men (*Steinman v. Angier*

Line [1891] 1 Q.B. 619). In this last case Bowen L.J., said, "About the middle of the seventeenth century the word 'thieves' found its way into the list of marine casualties against which insurances were effected, and from this time forth there has been a recurring discussion, both in England and in America, as to the extent to which, in policies of insurance, effect ought to be given to this special stipulation. 'Robbery' imports violence, but 'theft,' which properly speaking does not, may be of several kinds. There may be the assailing thief from outside, the thief who breaks through and steals; there may be a thief on board among those who are lawfully on board; there may, lastly, be a thief among the crew. The controversy has principally turned upon the question whether the term 'thieves' ought not to be confined to the first of these categories, viz. the depredators 'outside' the ship."

(2) As regards the statutory form of a marine insurance, "'thieves' does not cover clandestine theft, or a theft committed by any one of the ship's company, whether crew or passengers" (Sched. I, r. 9, Marine Insurance Act 1906 (c. 41). See also *La Fabrique de Produits Chimiques Société Anonyme v. Large* [1923] 1 K.B. 203.

See ROBBERS; ROBBERY; THEFT.

THING. (1) "Thing," in such a phrase as "building, erection, or thing," in a statutory prohibition, will generally be read *ejusdem generis*; thus, a lot of stones placed one upon another in the bed of a river but not fastened or cemented together was not a "thing" within such a phrase (*Colbran v. Barnes* 11 C.B.N.S. 246).

(2) "Other matter or thing": see *Winsborrow v. London Joint Stock Bank* 88 L.T. 803, cited HANG.

Destructive thing: see DESTRUCTIVE.

Navigable thing: see NAVIGABLE.

See ARTICLE; OTHER; THINGS.

THING IN ACTION. See CHOSE IN ACTION.

(Married Women's Property Act 1882 (c. 75), s.24.) A right of action which a wife had against her husband for his negligence before the parties were married was a "thing in action" (*Curtis v. Wilcox* [1948] 2 K.B. 474).

THINGS. (1) A bequest of "all things," in a particular house, will not pass bonds and other choses in action (*Popham v. Aylesbury* 1 Amb. 68; see thereon Wms. Exs. (12th ed.) 758).

(2) A residuary bequest of "all things not before bequeathed," will not pass testator's share in leaseholds (*Cook v. Oakley* 1 P. Wms. 302, cited 2 Jarm (8th ed.) 998). But where there was a bequest of leaseholds, household goods, wearing apparel, tools, moneys, bonds, bills and debts, "and all things that I may possess at my decease": held, that freeholds passed (*per* North J., *Re Turner, Arnold v. Blades* 36 S.J. 28, citing *Smyth v. Smyth* 8 Ch. D. 567, 568; but see *Stuart v. Bute* 1 Dow. 73, in which last case "things" was confined to matters *ejusdem generis*).

(3) A bequest of all "other things" has a very wide meaning (*Trafford v. Berrige* 1 Eq. Ca. Ab. 201). See further EVERY THING ELSE; EVERYTHING.

"Other valuable things": see VALUABLE.

Cp. EFFECTS.

"Goods, merchandise, or other things whatsoever": see OTHER.

"Things duly done": see DULY.

"Matters or things": see MATTER.

Things “so fixed as to form part of the realty”: see **REALTY**.

THINK FIT. (1) A power to trustees to invest in such securities as they “think fit” means such as they “honestly, though imprudently, think fit” (*Re Smith* [1896] 1 Ch. 71; *Re Brown* 29 Ch. D. 889; *Lewis v. Nobbs* 8 Ch. D. 591). Cp. **DISCRETION**.

(2) So, a power to pardon on such conditions as to the donee of the power “may seem fit” is not invalid on the ground that it would legalise torture and mutilation, for “barbarous practices are impliedly excluded” (*Watson’s Case* 9 A. & E. 783).

(3) S.12, Forfeiture Act 1870 (c. 23), gave the administrator of a felon’s property absolute power to let, etc., any part of such property as to him “shall seem fit”; “that imports that he must exercise some discretion and take some care in the matter; but, as long as he does that, the provisions of s.17 apply” (*per Cozens-Hardy L.J.*, *Carr v. Anderson* [1903] 1 Ch. 90, cited **FORFEITURE**). See Law of Property Act 1925 (15 Geo. 5, c. 20), s.7. Cp. **PLEASE**.

(4) A statutory power to erect, *e.g.* urinals, in such situations as the authority “think fit,” does not justify urinals where they constitute a private nuisance to individuals (*Parish v. London* 67 J.P. 55).

(5) In a lease executed under a power to lease “with or without fine, and rendering such rents and services as the donee should think fit,” no rent whatever need be reserved (*Talbot v. Tipper Skinner*, 427; *Re Molton* 2 Ir. Com. Law Rep. 634; *Sheehy v. Muskerry* 1 H.L. Ca. 576; Sug. Pow. 433–436, 816). If the power were “rendering such ‘yearly’ rents,” etc., possibly the rule would be different (*Talbot v. Tipper* *sup.*).

(6) “As shall seem reasonable and proper,” imports as wide an authority as “as he shall think fit” (*Taylor v. Mostyn* 23 Ch. D. 583).

(7) A power to a railway company to charge “such reasonable sum as the company may think fit in each case” for exceptional services, does not give the company the absolute power to fix the sum; the reasonableness of the charges is a question of fact for the jury: see *Midland Railway v. Myers* [1908] 2 K.B. 356, [1909] A.C. 13.

See *Lauder v. Brown* 27 Sc. L.R. 194, cited **NUMBER**.

See further **SEEM MEET**.

See **IF THEY SHALL THINK FIT**; **GENERAL POWER**.

THINK NECESSARY. “As they think necessary” (Income and Corporation Taxes Act 1970 (c. 10), s.453). These words confer a very wide discretion on the Inland Revenue Commissioners. The word “think” means forming an opinion in the exercise of a proper legal discretion (*Wilover Nominees Ltd. v. I.R.C.* [1973] 2 All E.R. 977).

See **NECESSARY**.

THINK PROPER. See **THINK FIT**; **REASONABLE AND PROPER**; **GENERAL POWER**.

THIRD PARTY. “Third parties,” in clause in insurance policy: see *Royal London Insurance Society Ltd. v. Barrett* [1928] 1 Ch. 411.

See **SEVENTH**.

THIRD PARTY PROCEEDINGS. Stat. Def., Limitation Act 1980 (c. 58), s.35(1).

THIRD PARTY RISKS. (Road Traffic Act 1930 (c. 43), s.35, Road Traffic Act 1972 (c. 20), s.143) connotes that the insurer is one party to the contract, that the policy-holder is another party, and that claims made by others in respect of the neg-

ligent use of the car may be naturally described as claims by third parties (*Digby v. General Accident Fire & Life Assurance Corporation* [1943] A.C. 121).

THIRDS. (1) By a settlement a provision out of real and personal estate was made for the wife “in lieu of dower or thirds”; held, the husband having died intestate, that the provision was in satisfaction of dower out of realty and of thirds out of personalty, and that the wife could claim nothing under the Statute of Distribution 1670 (c. 10) (*Thompson v. Watts* 31 L.J. Ch. 445); but the language of the settlement may confine that ruling to the property comprised therein (*Sambourne v. Barry* Ir. Rep. 6 Eq. 28).

(2) As to what is meant by the working of a barge on a system of “thirds,” see *Associated Portland Cement Manufacturers Ltd. v. Ashton* [1915] 2 K.B. 1.

THIRTY-NINE ARTICLES. See hereon, and as to their meanings, *Voysey v. Noble* L.R. 3 P.C. 357. The general rules for their exposition are—

“On the one hand, to ascertain the true construction of those articles of religion and formularies, referred to in each charge, according to the legal rules for the interpretation of statutes and written instruments; and, on the other hand, to ascertain the plain grammatical meaning of the passages which are charged as being contrary to, or inconsistent with, the doctrine of the church” (*per* Westbury C., delivering the judgment in the “Essays and Reviews” cases, *Williams v. Salisbury (Bishop)* and *Wilson v. Fendall* 2 Moore P.C.N.S. 424). But the court “is not compelled, as in cases affecting the right to property, to affix a definite meaning to any given article of religion the construction of which is fairly open to doubt, even should the court itself be of opinion (on argument) that a particular construction was supported by the greater weight of reasoning” (*per* Hatherley C., delivering the judgment, *Voysey v. Noble* L.R. 3 P.C. 385). “It is a very different thing where the authority of the articles is totally eluded, and the party deliberately declares the intention of teaching doctrines contrary to them” (*per* Lord Stowell, *His Majesty’s Procurator v. Stone* 1 Hagg. Con. 429); and in order to establish such a contrary teaching it is not necessary to show a contradiction, *totidem verbis*, of some passage in the articles (*Voysey v. Noble* *sup.*).

THIS. (1) “This” is a simple word of relation, and its ordinary grammatical meaning will not be extended so as to include something else than that to which it relates (*Bryson v. Russell* 14 Q.B.D. 720).

(2) When a clause in an Act of Parliament speaks of “this Act,” that means “the whole of the enactments in the Act” (*per* Esher M.R., *Re Williams and Stepney* [1891] 2 Q.B. 257, cited SUBMISSION).

(3) The words “this is my will,” in a will were held to refer not to the particular instrument, but to the testamentary disposition constituted by the will and codicils at the date of the testatrix’s death: see *Re Smith* [1916] 2 Ch. 368.

“This side”: see GIBALTAR.

THOROUGH. “Thorough repair”: see *per* Fletcher Moulton L.J., in *Lurcott v. Wakeley* [1911] 1 K.B. 905, cited REPAIR.

THOROUGHFARE. “Thoroughfare” (Metropolitan Police Act 1839 (c. 47), s.54) can include an access passageway to a market (*Brandon v. Barnes* [1966] 1 W.L.R. 1505).

“Nearest public thoroughfare”: see NEAREST.

See HIGHWAY; PUBLIC HIGHWAY; OBSTRUCT.

THOUSAND. Evidence of usage is admissible to show that "thousand," in a contract, means some figure other than 1000. *e.g.* 1200 (*Smith v. Wilson* 1 L.J.K.B. 194).

THREAT. (1) "It is the essence of a threat that it be made for the purpose of intimidating, or overcoming, the will of the person to whom it is addressed" (*per Lush J., Wood v. Bowron* L.R. 2 Q.B. 21, cited INTIMIDATE).

(2) A threat of legal proceedings (s.32, Patents, Designs, and Trade Marks Act 1883 (c. 57) see Patents Act 1949 (c. 87), s.65) need not relate only to acts already committed, but may also be contingent warnings directed to future acts; and is not less a threat because made in a solicitor's letter "without prejudice" (*per Kekewich J., Kurtz v. Spence* 57 L.J. Ch. 238, explaining *Challender v. Royle* 36 Ch. D. 425; see further CIRCULARS), or in a letter or notice of a general character (*Johnson v. Edge* [1892] 2 Ch. 1), not referring to any patent (*Douglass v. Pintsch Co.* 65 L.J. Ch. 919). But "to threaten is one thing; to circulate threats by someone else is another and different thing. Prima facie, at all events, this statement is true. Evidence may be adduced to prove that the circulation of threats by someone else is only a cloak to conceal threats really made by the person who circulates them" (*per Lindley M.R., Ellam v. Martyn* 68 L.J. Ch. 125). A person may be threatened by documents sent or published to persons other than himself (*Summers & Sons v. Cold Metal Process Co.* 65 R.P.C. 75). See further *Combined Weighing Machine Co. v. Automatic Weighing Machine Co.* 42 Ch. D. 665; *Barrett v. Day* 43 Ch. D. 435; *Skinner v. Shew* [1893] 1 Ch. 413. See also *Rosedale Associated Manufacturers v. Airfix Products* [1957] R.P.C. 239; DUE DILIGENCE. As to measure of damages, see *Skinner v. Perry* [1894] 2 Ch. 581; AGGRIEVED.

(3) Threat "to limit the number of his apprentices, or the number or description of his journeymen, workmen, or servants" (s.3, Combinations of Workmen Act 1825 (c. 129)): see *Walsby v. Anley* 30 L.J.M.C. 121; *Shelbourne v. Oliver* 30 L.T. 630; *O'Neill v. Kruger* 12 W.R. 47; *Skinner v. Kitch* L.R. 2 Q.B. 393; MOLEST.

(4) The meaning of the word "threat" in a labour dispute was discussed in *Hodges v. Webb* [1920] 2 Ch. 70, cited COERCION, and in *White v. Riley* [1921] 1 Ch. 1, also cited COERCION. See also *Ware and de Freville v. Motor Trade Association* [1921] 3 K.B. 40; *Sorrell v. Smith* [1925] A.C. 700.

See ACCUSE; BESET; INTIMIDATE; MENACE; INTERFERE.

THREATEN. (1) "Maliciously threatening to murder": see *R. v. Syme* 55 S.J. 704, cited MALICE.

(2) "Threatens," in s.31(2), Larceny Act 1916 (c. 50), was equivalent to "expresses an intention to" or "says that he will": see *R. v. Wyatt* 91 L.J.K.B. 402.

(3) "Otherwise threatens" (Patents Act 1949 (c. 87), s.65(1)), see *Speedcranes v. Thomson* 1972 S.L.T. 226.

THREE ESTATES. The three estates of the realm are (1) the lords spiritual, (2) the lords temporal, and (3) the commons.

THREE MONTHS. See *Haworth v. Sickness & Accident Assurance* 28 Sc. L.R. 394, cited EVERY. See Law of Property Act 1925 (c. 20), s.61, reversing the common law rule in *Phipps v. Rogers* [1925] 1 K.B. 14, that "three months' notice at common law means prima facie lunar months."

THREE TIMES GREATER. Houses and buildings had to pay lighting rate “three times greater” than land (s.33, Lighting and Watching Act 1833 (c. 90)); this did not mean “greater than by three times,” but means “three times greater than,” so that if the whole rate was treated as 6d., land would have paid 1½d., *i.e.* one-fourth (*R. v. Somersetshire* 22 J.P. 431; *R. v. South Eastern Railway* 19 L.J.N.C. 121; see further *R. v. Midland Railway* L.R. 10 Q.B. 389). See **PROPERTY OTHER THAN LAND**.

THRIFT. “Thrift scheme.” Stat. Def., Wages Council Act 1959 (c. 69), s.24; Wages Councils Act 1979 (c. 12), s.28.

THROAT. In an indictment for murder by cutting the “throat” of the deceased—“throat” is that which is commonly called the throat, and is not confined to that part of the neck which is scientifically called the throat; therefore, the allegation is proved by showing that the jugular vein was divided, although the carotid artery was not cut (*R. v. Edwards* 6 C. & P. 401).

THROUGH. (1) Under a grant of way from A to B “in, through, and along” a particular way, the grantee is not justified in making a transverse road “across” the same (*Senhouse v. Christian* 1 T.R. 560; see hereon *Wimbledon Common Conservators v. Dixon* 1 Ch. D. 370). See **ACROSS**.

(2) The power enabling a local authority (s.16, Public Health Act 1875 (c. 55)) to carry a sewer “into, through, or under” lands, was not confined to carrying it underground (*Roderick v. Aston* 5 Ch. D. 328).

(3) “Through, over, or under,” in a reservation of wayleave royalty: see *Great Western Railway v. Rous* L.R. 4 H.L. 650.

(4) “Through an agent,” under R.S.C., old Ord. 11, r. 1 (e): see *National Mortgage & Agency Co. of New Zealand v. Gosselin* 38 T.L.R. 832.

(5) An interruption is done by a person claiming “through” a covenantor for quiet enjoyment if such person acquires title by an act of commission on the part of the covenantor, *e.g.* by such covenantor “consenting to” a judgment in an action of ejectment by such person against him to which the covenantor had a good defence (*Cohen v. Tannar* [1900] 2 Q.B. 609); *secus*, if the covenantor’s sin is one of omission only, *e.g.* default in performing his own covenant, or, probably, if he merely allows judgment to go by default against him (*Kelly v. Rogers* [1892] 1 Q.B. 910). *Semble*, “through” is the best word for the covenantee in the phrase “claiming by, from, through, or under” the covenantor. See further **CLAIMING UNDER**.

(6) A marine insurance against damage to machinery “through” a latent defect means a damage “in consequence of,” or “caused by,” such defect, and does not cover damage which is a development of the latent defect itself (*Oceanic S.S. Co. v. Faber* 95 L.T. 607).

(7) Payment of wages to a discharged seaman “through, or in the presence of, the superintendent, unless a competent court otherwise directs” (s.131(1), Merchant Shipping Act 1894 (c. 60)): see *Keslake v. Board of Trade* [1903] 2 K.B. 453.

(8) “Through or under him” (Arbitration Act 1975 (c. 3), s.1). An assignee of a debt claiming against the debtor where the debt arose out of a contract subject to an arbitration agreement, claimed “through or under” the assignor within the meaning of this section (*Rumput (Panama) SA v. Islamic Republic of Iran Shipping Lines* [1984] 2 Lloyd’s Rep. 259).

“Persons claiming through a member”: see **PERSON**.

“Through the intervention”: see **INTERVENTION**.

Person “through whose act”: see **BY WHOSE**.

THROUGH RATE. “Through rates” for through traffic, under Railway and Canal Traffic Act 1888 (c. 25): see s.25, on which see *London & India Docks Co. v. Great Eastern Railway and Midland Railway* [1902] 1 K.B. 589, cited **RAILWAY COMPANY**.

THROUGH TOLL. See *Warwick & Birmingham Canal Navigation v. Birmingham Canal Navigation* 3 Ry. & Can. Traffic Ca. 113, cited **TOLL**.

THROUGH TRAFFIC. (1) In a railway sense, “local traffic,” meant traffic arising and terminating on the railways of the company spoken of; “through traffic” meant traffic passing to, from or over such railways from, to or over the railways of any other company: see hereon s.25, Railway and Canal Traffic Act 1888 (c. 25).

(2) In an agreement by one railway company to work another company’s line “so as to develop and accommodate not merely the through traffic, but also the local traffic of the district to be served by the railway,” “through traffic” means such traffic as that for which the railway provides the shortest and most convenient route, and not that which may be more conveniently or economically carried by any other route (*Eastern & Midland Railway v. Midland Railway* 5 Ry. & Can. Traffic Ca. 235). See further as to “through traffic” in an agreement, *Central Wales Railway v. London & North Western Railway* 4 Ry. & Can. Traffic Ca. 101. See also **SHORTEST ROUTE**; Railways Act 1921 (c. 55), 86.

(3) “Through traffic rate and route” (s.11, Regulation of Railways Act 1873 (c. 48)): see *Central Wales Railway v. Great Western Railway* 10 Q.B.D. 231, following *Greenock & Wemyss Bay Railway v. Caledonian Railway* 3 Ry. & Can. Traffic Ca. 145; *Belfast Central Railway v. Great Northern Railway, Ireland* 4 Ry. & Can. Traffic Ca. 159. See further **FORWARDING CO.**; **USING**.

THROUGHOUT. (1) Where a vessel was to sail for her loading port by March 15, “the act of God . . . throughout this charterparty, always excepted,” and was prevented by an act of God from sailing till March 18; held, that “throughout” might exonerate the shipowner from liability for not sailing on the 15th, but did not affect the condition upon the performance of which the charterer contracted to load the ship (*Crookewit v. Fletcher* 26 L.J. Ex. 153).

(2) Where a codicil revokes the appointment of an executor and substitutes another person in his stead and goes on to declare that the will shall be construed as though the name of such other person had throughout the will been used instead of that of the person whose executorship was revoked, that generally will not revoke personal benefits given by the will to the person whose executorship is revoked: see *Re Freeman* [1901] 1 Ch. 681.

(3) Companies Act 1948 (c. 38), s.331. The section imposes a duty on a company which is being wound up to keep proper books of account for the whole of the two-year period immediately preceding the commencement of the winding-up. Failure to keep books properly for part of this period is a breach of this duty (*Laurenson v. H.M. Advocate* 1960 S.L.T. 113; 1959 J.C. 106).

THROWN OUT. “Thrown out of employment,” in the rules of a trade union, does not mean “unable to get employment”; the phrase means “a case where the continuity of the employment is broken for the first time by a lockout, or a going out, by direction of the association” (*per Williams L.J., Howden v. Yorkshire Miners’ Association* [1903] 1 K.B. 332).

See TURN OUT; TRADE UNION; TRADE DISPUTE.

TICKET. “Deliver up” his ticket: see DELIVER.

Stat. Def., Betting, Gaming and Lotteries Act 1963 (c. 2), s.55(1); see also s.22, and *Barker v. Wood* 48 T.L.R. 402; Lotteries Act 1975 (c. 58), s.16; Lotteries and Amusements Act 1976 (c. 32), s.23.

Ticket of leave: see Penal Servitude Acts 1852 (c. 99), s.9; 1864 (c. 47), ss.4 and 10, and Sched. A; and 1891 (c. 69), s.5.

See SEE BACK.

TIDAL RIVER. “That is called an arm of the sea where the sea flows and reflows, and so far only as the sea flows and reflows” (Hale, *De Jure Maris*, 12; Hargr. Tracts, Pt. 1, ch. 5, p. 17 *et seq.*). Therefore, a river is a tidal river in such parts only as are within the regular ebb and flow of the highest tides (*Reece v. Miller* 8 Q.B.D. 626; see further *Mussett v. Burch* 35 L.T. 486; *Hudson v. McRae* 33 L.J.M.C. 65; *Hargreaves v. Diddams* L.R. 10 Q.B. 582).

See NAVIGABLE. Cp. TIDAL LAND.

TIDAL WATER. “Tidal waters” (Salmon and Freshwater Fisheries Act 1923 (c. 16), s.11) are not confined to the area between the high water mark and the low water mark, but include any part of the sea within territorial waters where there is a real and perceptible ebb and flow of the tide, whether lateral or vertical (*Ingram v. Percival* [1969] 1 Q.B. 548).

Stat. Def., Merchant Shipping Act 1894 (c. 60), s.742; Land Drainage Act 1930 (c. 44), ss.41(6), 77(2); Control of Pollution Act 1974 (c. 40), s.56; Land Drainage Act 1976 (c. 70), s.27.

TIDE. See AT ALL TIMES OF TIDE; NAVIGABLE; NEAP; SHORE.

“Tide permitting”: see PERMITTING.

TIED HOUSE. (1) A “tide house” usually connotes an inn or beer-house rented from a person or firm from whom the tenant is, by agreement, compelled to purchase liquors or other commodities to be therein consumed or sold. See hereon *Rice v. Noakes* [1900] 1 Ch. 213, cited MORTGAGE, affirmed in H.L. [1902] A.C. 24.

(2) Tied houses are not essentially part of the business, and their cost is not a deduction from the taxable profits of a brewer (*Watney v. Musgrave* 5 Ex. D. 241; but see *Smith v. Lion Brewery* [1911] A.C. 150; cp. *Hancock v. Gillard* [1907] 1 K.B. 47, cited RENT PAYABLE; see COMPENSATION; see also *R. v. Commissioners of Customs and Excise* 97 L.J.K.B. 771; *Brickwood v. Reynolds* [1898] 1 Q.B. 95, cited PURPOSES). See further *Southwell v. Savill* [1901] 2 K.B. 349; *Strong v. Woodfield* [1905] 2 K.B. 350, cited CONNECTED WITH. As to assigning the agreement: see SPIRITUOUS LIQUOR.

(3) Rateable value of: see *Bradford v. White* [1898] 2 Q.B. 630, cited ANNUAL VALUE; *Re London County Council and City of London Brewery Co.* [1898] 1 Q.B. 393, cited TRADE INTEREST.

(4) “Fair market value” of a tied house: see *Re Chandler’s Brewery Co. and London County Council* [1903] 1 K.B. 569, cited VALUE.

TIGH. “‘Tigh, or teage,’ a close or enclosure, a croft” (Cowel).

TIGHT. “The representation that the ship is ‘tight, staunch, and strong, and every way fitted for the voyage’ seems to be equivalent to the warranty of seaworthiness

and fitness, which is implied by law on the part of the shipowner" (Carver (12th ed.), 356, and cases there cited). See SEAWORTHY.

TILL. See UNTIL.

TILLAGE. "Tillage" and "agricultural" land are synonyms (Co. Litt. 85 b, cited by Willes J., *Vigar v. Dudman* L.R. 6 C.P. 470). To constitute a conversion of land into tillage "there must be a breaking of the soil for agricultural purposes; a garden and orchard, for the purposes of tithes, have always been considered different from agricultural land, for agricultural tithes are great tithes—the tithes on a garden or orchard are small tithes. Tillage involves ploughing or something analogous (see Johnson's Dictionary by Latham, and Webster's Dictionary). A distinction is made between 'tillage,' 'pasture,' 'garden,' and 'orchard,' in the Tillage Acts 1515 (c. 1), 1535 (c. 22) and 1551 (c. 5)" (*per* Charles, *arg. ibid.*). The planting of land with trees is not a conversion of it into tillage, nor is the building of a house and using part of the land as an orchard, or, *semble*, as a garden for the convenience of the house, such a conversion (*ibid.*, L.R. 6 H.L. 212).

TIMBER. (1) "By the term 'timber' is meant properly such trees only as are fit to be used in building and repairing houses; thus oak, ash, and elm trees are considered 'timber' in all places, and under whatsoever circumstances they are grown (Co. Litt. 53 a). But only trees of not less than 6 inches in diameter or 2 feet girth (allowing for irregularities of shape) appear to be reckoned or considered as 'timber' (*Whitty v. Dillon* 2 F. & F. 67)" (Woodf. (24th ed.), 745). And no wood "is timber until of 20 years' growth" (*Dunn v. Bryan* Ir. Rep. 7 Eq. 143; *Foster v. Leonard* Cro Eliz. 1; see further as to what are, and what are not, timber trees, *Honywood v. Honywood* L.R. 18 Eq. 306).

(2) "Many descriptions of trees, which are not generally considered as timber, are so in some places by the custom of the country, being there used for the purpose of building; thus it has been laid down that horse-chestnuts, limes, birch, beech, asp. walnut trees, and the like may under such circumstances be deemed timber, and are therefore protected by the law as such (*Chandos v. Talbot* 2 P. Wms. 606; *Palmer's Case* Co. Litt. 53 a, Hargrave's note, 349). It has been determined that, in the county of York, birch trees are timber, because they are used in that county for building sheep-houses, cottages, and such mean buildings (*Cumberland's Case* Moore, 812); and it would seem that, in Hampshire, willows have been considered as 'timber,' by the custom of the country (*Layfield v. Cowper* 1 Wood. 330; *Guffly v. Pindar* Hob. 219)" (Woodf. (24th ed.) 745, 746). See further *Gordon v. Woodford* 29 L.J. Ch. 222. To the like effect is the passage in Dart already referred to, where it is laid down that "timber" includes, "by local custom, beech and various other trees; even trees which are primarily fruit trees, as cherry, chestnut, and walnut (*Chandos v. Talbot* sup.)." So white-thorn may be timber (*Palmer's Case* sup.). But though Dart does not mention the condition emphasised in the passage extracted from Woodfall, *viz.* that to bring trees, not usually regarded as "timber," within that word, they must by the custom be "used for the purpose of building," yet it would seem that that at least is an important element in such a construction.

(3) Beech trees are timber in Buckinghamshire, but not in Oxfordshire (*Dashwood v. Magniac* [1891] 3 Ch. 306).

(4) Where beech trees—or, as it should seem, any other trees—are by the custom of the country, and having regard to their nature and age, "timber," "no evidence can be received to qualify its character of timber by showing that it was not deemed

to be such in the county unless the tree contained ten feet of solid wood" (Woodf. (24th ed.) 746, citing *Aubrey v. Fisher* 10 East, 446; *Chandos v. Talbot* sup.; Co. Litt. 53).

(5) Larch trees are not timber, except by a local custom (*per* Kay L.J., *Dashwood v. Magniac* sup.; *Re Harrison* 54 L.J. Ch. 617, 618).

(6) "Although pollards have been said not to be timber (Plowd. 470; *Phillipps v. Smith* 15 L.J. Ex. 201), yet Lord King inclined to think them timber, provided their bodies were sound and good; and in an action to recover the value of pollards under the description of timber and timber-like trees, the plaintiff recovered a verdict (*Rabbett v. Raikes* Suffolk Sum. Ass. 1803, cor. Macdonald C.B.; *Channon v. Patch* 5 B. & C. 897)" (Woodf. (24th ed.) 746). Dart says (149, 150), "As a general rule, pollards would seem not to be timber; if sound, however, they may be timber by local custom"; but a little further down the latter page (and citing *Rabbett v. Raikes* sup., and 2 P. Wms. 606), it is said that timber and timber-like trees "would seem to include sound pollards" (see also Sug. V. & P. (14th ed.) 32). Cp. STANDELL; UNDERWOOD.

(7) Under the words of a grant of "timber and timber-like trees now growing and being or which shall hereafter grow and be upon the said lands," Romilly M.R., held that "thinnings" were included, and that it was for the grantee to determine what should be cut (*Gordon v. Woodford* sup.).

(8) A devise for life carries the "immediate right to the underwood, though not to other wood" (*per* Leach V.-C., *Butler v. Borton* 5 Mad. 43); therefore, an exception from such a devise to trustees to take "timber or wood" for repairs, does not include underwood, for the exception connotes wood to which the tenant for life would not be entitled (*ibid.*).

(9) Ornamental timber was distinguished from ordinary timber in *Magennis v. Fallon* 2 Malloy, 590; see also *Ford v. Tynte* 2 D.G.J. & S. 127.

(10) "Timber at measurement weight": see *Great Western Railway v. Caswell* [1904] 2 K.B. 508.

(11) The proceeds of timber when rightfully felled and sold under an order of the court, become personal estate for all purposes (*per* Cozens-Hardy J., *Hartley v. Pendarves* [1901] 2 Ch. 498, following *Steed v. Preece* 43 L.J. Ch. 687, and *Hyett v. Mekin* 25 Ch. D. 735, and rejecting *Field v. Brown* 27 Bea. 90).

Stat. Def., Forestry Act 1919 (c. 58), s.3; Settled Land Act 1925 (c. 18), s.48; National Parks and Access to the Countryside Act 1949 (c. 97), s.79(6); Plant Health Act 1967 (c. 8), s.1(2)(a); Forestry Act 1967 (c. 10), s.3(4).

See TIMBERS.

TIMBER DUES. See *Burstall v. Baptist* 21 W.R. 485.

TIMBER ESTATE. (1) This phrase was first employed in *Ferrand v. Wilson* 15 L.J. Ch. 48. It has been said that a timber estate is "an estate in which trees are cut, not for the immediate wants of the owner or for the value of the trees themselves, but to preserve the estate by allowing the natural succession to grow up" (*per* Rigby, arg. *Dashwood v. Magniac* 60 L.J. Ch. 813). In this last case, Bowen L.J. (in a characteristically learned and lucid judgment), defined a timber estate as one "which is cultivated merely for the produce of saleable timber, and where the timber is cut periodically"; but see *per* Kay L.J., *ibid.* See also *Honywood v. Honnywood* L.R. 18 Eq. 309, 310.

(2) "The whole essence of a timber estate is that there should be a regular course of cultivation; the main object being that the timber should produce for the tenant

for life income at periodical intervals" (*per* Stirling J., *Pardoe v. Pardoe* 82 L.T. 547, cited WASTE).

See TIMBER; WASTE. Cp. MINERAL ESTATE.

TIMBER YARD. See *Haddock v. Humphrey* [1900] 1 Q.B. 609, cited WHARF.

TIMBERLODE. "A service by which tenants were to carry timber from the woods to the lord's house" (Jacob; see further Cowel).

TIMBERS. "Main timbers," in a covenant to repair, will include iron beams which are used as substitutes for timbers (*Manchester Bonding Warehouse Co. v. Carr* 5 C.P.D. 507).

TIME. (1) "Whenever any expression of time occurs in any Act of Parliament, deed, or other legal instrument, the time referred to shall, unless it is otherwise specifically stated, be held to be Greenwich mean time (s.1, Statutes (Definition of Time) Act 1880 (c. 9)). See DAY; OF THE CLOCK; SUNSET.

(2) There is probably no general rule, in computing time from an act or event, that the day is to be inclusive or exclusive; it depends on the reason of the thing according to the circumstances (*Lester v. Garland* 15 Ves. 248); but, referring to that case, Bayley J., said, "All the authorities on the subject are reviewed by Sir W. Grant, who takes this distinction—that where the act done from which the computation is made is one to which the party against whom the time runs is privy, the day of the act done may reasonably be included; but where it is one to which he is a stranger, it ought to be excluded" (*Hardy v. Ryle* 9 B. & C. 608). Accordingly, it was there held that where the action against a justice had, under Constables Protection Act 1750 (c. 44), s.8, to be brought "within 6 calendar months after the act committed," the day of doing the act by the justice was excluded. See also FROM.

(3) (R.S.C., Ord. 65, r. 27(48), see now Ord. 62, App. 2, Part X, r. 2(4).) In calculating the time occupied by a trial for the purpose of refresher fees the times of the actual hearing in court should be added together (*Wright v. Bennett* [1947] K.B. 828). Time spent in conference in the precincts of the court, either in the corridor or judge's room, for the purpose of arriving at a settlement, should also be included (*Lawson v. Tiger* [1953] 1 W.L.R. 503).

(4) The computation of time in criminal matters is governed by the same rule as in civil matters (*Radcliffe v. Bartholomew* [1892] 1 Q.B. 161, cited CALENDAR MONTH).

(5) "Time," in s.150, Public Health Act 1875 (c. 55): see *Macclesfield Corporation v. Macclesfield Grammar School* [1921] 2 Ch. 189; *Bristol Corporation v. Sinnott* [1918] 1 Ch. 62; *Sunderland v. Gray* [1928] Ch. 756.

(6) "Time or times when they ought to be delivered," in s.51(3), Sale of Goods Act 1893 (c. 71): see *Sharpe & Co. Ltd. v. Nosawa & Co.* [1917] 2 K.B. 814.

(7) "Time elapsing" (Bankruptcy Act 1914 (c. 59), s.1): see *Mason v. Bolton's Library* [1913] 1 K.B. 83.

(8) "Time which the driver has for rest" (Road Traffic Act 1960 (c. 16), s.73(4); see Transport Act 1968 (c. 73), s.96). Time spent by the driver going back to base in a private car (sometimes driving and sometimes being driven) was held to count as time for rest for the purposes of this section (*Witchell v. Abbott* [1966] 1 W.L.R. 852).

(9) "Time for appealing" (Landlord and Tenant Act 1954 (c. 56), s.64(2)). This included the time for lodging a petition to the House of Lords for leave to appeal

(*Re 20 Exchange Street, Manchester, Austin Reed v. Royal Insurance Co.* [1956] 1 W.L.R. 765).

(10) "Time and place at which that article was tested" (Weights and Measures Act 1963 (c. 31), s.26(7)). Where an article is purchased and taken to an inspector of weights and measures who tests it, the other similar articles in the shop, although "available for testing," were held not to be available at the "time and place" of the first one (*Sears v. Smiths Food Group* [1968] 2 Q.B. 288).

(11) The "time of entering up . . . judgment" (Judgments Act 1838 (c. 110), s.17) is the time when judgment is pronounced in court, not the time when it is formally entered (*Parsons v. Mather & Platt* [1977] 1 W.L.R. 855).

As to an agreement to give time for payment, see FORBEAR, also VALUABLE.

"One and the same time, and from one and the same source": see ONE TIME.

"Time of the essence of the contract": see ESSENCE.

Claim "consequent on loss of time": see LOSS.

Reasonable time: see REASONABLE.

See AT ALL TIMES; AT ANY TIME; AT THE PRESENT TIME; AT THE TIME; CERTAIN TIME; CLEAR; CONVENIENT TIME; FORTNIGHT; HOUR; LIMITATION; MEMORY; MONTH; ONE TIME; PERIOD; SITTING; STIPULATED; TERM; WEEK.

TIME BARGAIN. A "time bargain" is not necessarily a gaming contract. "If I buy a crop of apples which grow next year on a particular tree, that is a 'time bargain,' but it is not invalid" (*per* Bramwell L.J., *Thacker v. Hardy* 4 Q.B.D. 685). But the usual meaning of "time bargain," as used on the Stock Exchange, is that it is a contract to pay "differences," *i.e.* to receive or pay the difference between the price of the subject-matter at one time and its price at another time—and then it is a gaming contract (*Grizewood v. Blane* 21 L.J.C.P. 46; *Rourke v. Short* 25 L.J.Q.B. 196; *Thacker v. Hardy* *sup.*). See hereon *Hibblewhite v. M'Morine* 8 L.J. Ex. 271; *Coles v. Bristowe* 38 L.J. Ch. 81; *Maxsted v. Paine* 38 L.J. Ex. 41. See *Buitenlandsche Bank v. Hildesheim* 47 S.J. 707.

TIME BEING. (1) The phrase "for the time being" may, according to its context, mean the time present, or denote a single period of time; but its general sense is that of time indefinite, and refers to an indefinite state of facts which will arise in the future, and which may (and probably will) vary from time to time (*Ellison v. Thomas* 31 L.J. Ch. 867; 32 L.J. Ch. 32; *Coles v. Pack* L.R. 5 C.P. 65). See also *Re Gunter's Settlement Trusts* [1949] Ch. 502.

(2) A testamentary gift in remainder to testator's "next of kin for the time being" means the next of kin living at his death (*Moss v. Dunlop Johns*. 490).

(3) Where rights are to be enforced by, or penalties are to be paid to, officers (whether parochial or otherwise) "for the time being," that connotes officers who are such when the action is commenced, not those who were such when the right arose or the penalty was incurred (*Addey v. Woolley* 8 Taunt. 691; *Doe d. Higgs v. Terry* 5 L.J.M.C. 27; *Graves v. Colby* 8 L.J.Q.B. 57).

(4) Covenant with the owners "for the time being" of land: see *Forster v. Elvet Colliery Co.* [1908] 1 K.B. 629, cited ASSIGNS.

(5) "Owner for the time being" of shares in a company; held, not to include a holder who had sold his shares after a call made, but before it was payable (*Aylesbury Railway v. Thompson* 2 Ry. Ca. 668; but see *London & Brighton Railway v. Fairclough* 10 L.J.C.P. 133).

(6) As to the effect of making a promissory note payable to the secretary "for the

time being" of a named society or company, see *Storm v. Stirling* 23 L.J.Q.B. 298, cited SECRETARY.

(7) A direction to pay calls on shares which, at or after his death might be or become due in respect of shares "for the time being" constituting part of testator's residuary personal estate; held, to apply to calls on shares held by the testator at his death, but not to shares afterwards acquired by the trustees (*Bevan v. Waterhouse* 3 Ch. D. 752).

(8) "Amount for the time being secured" (s.15(2), Building Societies Act 1874 (c. 42)): see *Re Neath Building Society* 43 Ch. D. 158, cited AMOUNT.

(9) "Surveyor for the time being": see *Kendal v. Lewisham* 67 J.P. 236, cited SURVEYOR.

(10) Persons who are "for the time being" trustees under s.2(8), Settled Land Act 1882 (c. 38), were those expressly appointed for the purposes of the Act, or else had at the time of the proposed sale thereunder, a present and immediate power to sell or consent to a sale (*Wheelwright v. Walker* 23 Ch. D. 752). See Settled Land Act 1925 (c. 18), s.30(1).

(11) "It has been said that if a power to vary the rights of parties be communicated to the 'trustees for the time being,' it cannot be exercised by a single trustee" (Lewin (10th ed.), 718, citing *Lancashire v. Lancashire* 2 Phill. 664).

(12) A power of sale to the "trustees for the time being" was (by virtue of s.30, Conveyancing Act 1881 (c. 41)) exercisable by the executors of the last surviving trustee (*Re Pixton and Tong* 46 W.R. 187). Cp. Trustee Act 1925 (c. 19), s.18.

(13) "Valuation list for the time being in force": see *Westminster v. Army & Navy Auxiliary Supply* [1902] 2 K.B. 133, cited VALUATION.

(14) "For the time being" (s.5, Trade Marks Registration Act 1875 (c. 91)): see *Wood v. Lambert* 29 S.J. 455.

(15) "For the time being," in s.45(2), Finance (No. 2) Act 1915 (c. 89), meant at the date of assessment and not during the period of charge: see *Wankie Colliery Co. v. Inland Revenue Commissioners* [1922] 2 A.C. 51.

(16) "The amount for the time being payable" by the landlord in s.1(4), Increase of Rent and Mortgage Interest (War Restrictions) Act 1915 (c. 97): see *Nicholson v. Jackson* 90 L.J.K.B. 1121.

(17) "For the time being" (Import Duties Act 1958 (c. 6), s.2(3)(c)) refers to the time when the dutiable goods were grown, produced or manufactured and consigned to the United Kingdom (*Gallaher v. Commissioners of Customs and Excise* [1968] 2 Q.B. 674).

(18) "For the time being used for ecclesiastical purposes" (Town and Country Planning Act 1971 (c. 78), s.56(1)(a)) means being used for ecclesiastical purposes at the time when the works (for which exemption from the necessity of obtaining listed building consent is sought) are to be carried out (*Att.-Gen., ex rel. Bedfordshire County Council v. Howard United Reformed Church Trustees, Bedford* [1976] A.C. 363).

(19) Where justices have jurisdiction "in the place where the person charged with the offence is for the time being" (Transport Act 1968 (c. 73), s.107(3)) the time referred to is that when the proceedings were commenced (*R. v. Hitchin Justices, ex p. Hilton* [1974] R.T.R. 380).

(20) "The time being" in art. 2 of the Employers Health and Safety Policy Statements (Exceptions) Regulations 1975 (No. 1584) should be construed as meaning at "any one time" (*Osborne v. Bill Taylor of Huxton* [1982] I.C.R. 168).

TIME CERTAIN. See CERTAIN TIME.

TIME CHARTER. (1) See hereon *Wehner v. Dene S.S. Co.* [1905] 2 K.B. 92; *Turner v. Haji Goolam Mahomed Azam* [1904] A.C. 826.

(2) A time charterparty which was originally a demise of the ship is in modern usage an agreement to perform certain services for the charterers (*The Alresford* [1942] 1 All E.R. 503).

TIME IMMEMORIAL. See TIME OUT OF MIND.

TIME OF PAYMENT. See STIPULATED.

TIME OR SITTING. Gaming Act 1710 (c. 19), s.2: see SITTING.

TIME OUT OF MIND. (1) "Some have said that 'time out of mind' should be said from time of limitation in a writ of right; that is to say, from the time of King Richard the First after the Conquest" (Litt. s.170), *i.e.* A.D. 1189. See LONG.

(2) The synonym of this phrase is "time immemorial": "the expression 'time immemorial,' or 'time whereof the memory of man runneth not to the contrary,' is now, by the law of England, in many cases considered to include and denote the whole period of time from the reign of King Richard the First" (Prescription Act 1832 (c. 71), preamble).

See PRESCRIPTION.

TIME PIECE. "Time pieces" (s.1, Carriers Act 1830 (c. 68)) included a chronometer (*Le Couteur v. London & South Western Railway L.R.* 1 Q.B. 54, cited PERSONAL LUGGAGE).

TIME POLICY. (1) "A time policy is one in which the risk is limited by time alone" (Arn. (13th ed.) ch. 16). Cp. VOYAGE.

(2) Time policy of sea insurance: see POLICY; s.93, Stamp Act 1891 (c. 39), on which see s.11, Finance Act 1901 (1 Edw. 7, c. 7); *Royal Exchange Assurance v. Sjoforsakrings* [1902] 2 K.B. 384, cited POLICY.

(3) A policy of marine insurance is a "time policy" within the meaning of the Marine Insurance Act 1906 (c. 41), s.39(5) even though the specified period of its duration may be extended by the parties thereto (*Compania Maritima San Basilio S.A. v. Oceanus Mutual Underwriting Association (Bermuda)* [1977] Q.B. 49).

TIME RATE. Stat. Def., Wages Council Act 1979 (c. 12), s.28.

TIME TABLES. See *Leslie v. Young* [1894] A.C. 335, cited BOOK.

TIME TO TIME. See FROM TIME TO TIME.

TINKER. See PEDLAR.

TIPPLING ACT. (1) Sale of Spirits Act 1750 (c. 40), amended by Sale of Spirits Act 1862 (c. 38): see ITEM; ONE TIME; RECOVER; SPIRITUOUS LIQUOR.

(2) The Act "is intended to cover the case of liquor served out to persons coming to a licensed house for temporary refreshment, but not to cover the case of a guest living in an hotel" (*per* Macdonald L.J.C., *Guthrie v. Ireland* 28 Sc. L.R. 641, following Abinger C.B., in *Proctor v. Nicholson* 7 C. & P. 67, and disregarding the doubts as to this last case of Denman C.J., in *Hughes v. Done* 1 Q.B. 294, doubts

which the latter learned judge based on *Gilpin v. Rendle* 1 Selwyn N.P. (10th ed.) 55, and *Burnyeat v. Hutchinson* 5 B. & Ald. 241).

TIPS. See *Penn v. Spiers & Pond* [1908] 1 K.B. 766, cited EARNINGS; *Great Western Railway v. Helps* [1918] A.C. 141; *Skailes v. Blue Anchor Line* [1911] 1 K.B. 360, cited REMUNERATION.

TIPSTAFF. See *G. v. L.* [1891] 3 Ch. 128, n.

TITHE. See TITHES.

TITHE FREE. If property is sold “tithe free,” that is a material statement, and the purchaser is not bound to complete if it be untrue (*Ker v. Clobury* MS. Sug. V. & P. (14th ed.) 321, correcting *Stanhope’s Case*, cited *Drewe v. Hanson* 6 Ves. 678).

TITHE RENTCHARGE. (1) “Expenses, rentcharge, or other sums, to be recovered as tithe rentcharge” (s.10(4), Tithe Act 1891 (c. 8)); see further s.2, included redemption charges and expenses (*R. v. Paterson* [1895] 1 Q.B. 31).

(2) The definition of tithe rent-charge in the Tithe Act 1891 (c. 8) was inapplicable to any payment in the City of London: see *Re Salter and Audry’s Lease* [1921] 2 Ch. 141.

Tithe rent charge was abolished by the Tithe Act 1936 (c. 43), s.1.

TITHES. (1) “Tithes is an ecclesiastical inheritance collateral to the estate of the land, and of their proper nature due only to an ecclesiastical person by the ecclesiastical law” (*Priddle’s Case* 11 Rep. 1(b)); and were “the tenth part of all fruits, predial, personal, and mixt, which are due to God, and consequently to his churches ministers for their maintenance” (Cowel). See further Jacob; 2 Bl. Com. 23–32; 3 Cru. Dig. Title 22; COMMUTATION.

(2) “Prædial tithes were such as arise merely and immediately from the ground; as grain of all sorts, hay, wood, fruit, herbs.

“Mixt tithes were those which arise, not immediately from the ground, but from things immediately nourished by the ground, as by means of goods depastured thereupon, or otherwise nourished with the fruits thereof; as colts, calves, lambs, chicken, milk, cheese, eggs.

“Personal tithes were such profits as do arise by the honest labour and industry of man, employing himself in some personal work, artifice, or negotiation; being the tenth part of the clear gain after charges deducted” (Phil. Ecc. Law, 1148).

(3) As to what were “great,” as distinguished from “small,” tithes, see *Daws v. Benn* 1 B. & C. 751; TILLAGE.

(4) Compensation for, and commutation of, tithes were provided for by the Tithe Act 1836 (c. 71), under s.12 of which Act “‘tithes’ shall mean and include all uncommuted tithes, portions and parcels of tithes, and all moduses, compositions real and prescriptive, and customary payments.”

(5) Church Building Act 1851 (c. 97), s.29, “‘tithes’ shall mean and include all commuted or uncommuted tithes, rent-charges in lieu of tithe, portions and parcels of tithes, and all moduses, compositions real and prescriptive, and customary payments.”

(6) District Church Tithes Act 1865 (c. 42), s.2, “‘tithes’ shall include commutation rent-charges, and all moduses, compositions, prescriptive and other payments, or redemption money, in lieu of tithes.”

(7) "Tithes" in Real Property Limitation Act 1833 (c. 27), was confined to tithes as between adverse claimants to tithes (*Grant v. Ellis* 11 L.J. Ex. 228; *Ely v. Cash* 15 L.J. Ex. 341; *Ely v. Bliss* 2 D.G.M. & G. 459; *Bunbury v. Fuller* 9 Ex. 128). See further *Payne v. Esdaile* 13 App. Ca. 613.

(8) Tithes in A would pass under a devise of "land" in A, if there was no land there belonging to testator (*Ashton v. Ashton* 3 P. Wms. 386); so they might, or might not, be included in "my real estates" (*Evans v. Evans* 14 Jur. 383).

"Tenement" may include tithes: see TENEMENT.

See COMPOSITION; OUTGOING; TITHE RENTCHARGE.

TITHING. See HUNDRED.

A tithing was, "in its first appointment, the number or company of ten men with their families, held together in a society, all being bound for the peaceable behaviour of each other" (Jacob).

TITLE. (1) "'Title' properly (as some say) is when a man hath a lawful cause of entry into lands whereof another is seised, for the which hee can have no action, as title of condition, title of mortmain, etc. But legally this word (title) includeth a right also, as you shall perceive in many places in Littleton; and title is the more generall word; for every right is a title, but every title is not such a right for which an action lieth; and therefore *titulus est justa causa possidendi quod nostrum est*, and signifieth the meanes whereby a man commeth to land, as his title is by fine or by feoffment, etc." (Co. Litt. 345 b; see hereon Elph. 205).

(2) "The word 'title' has different meanings. In one sense, it may import whether a party has a right to a thing which is admitted to exist; or it may mean whether the thing claimed does in fact exist" (*per* Coleridge J., *Adey v. Trinity House* 22 L.J.Q.B. 4).

(3) When a certain number of years' title to realty has to be shown, *e.g.* a forty years' title, "that means a title deduced for 40 years and for so much longer as it is necessary to go back in order to arrive at a point at which the title can properly commence. The title cannot commence *in nubibus* at the exact point of time which is represented by 365 days multiplied by 40. It must commence at or before the 40 years with something which is in itself, or which it is agreed shall be, a proper root of title" (*per* North J., *Re Cox and Neve* [1891] 2 Ch. 118).

(4) As to what is an objection to "title" within conditions of sale of realty, see *Forbes v. Peacock* 13 L.J. Ch. 46, disapproving *Bentham v. Wiltshire* 4 Mad. 44, and *Page v. Adam* 4 Bea. 269; *Price v. Macaulay* 19 L.T.O.S. 238; *Ashburner v. Sewell* [1891] 3 Ch. 405 (see this case, which was followed in *Yandle & Sons v. Sutton* [1922] 2 Ch. 199); *Simpson v. Gilley* 92 L.J. Ch. 194, on the distinction between an objection to title and an error.

(5) A clause giving a vendor power to rescind contract of sale if objection or requisition be made "as to title, or evidence of title," applies only where he has "some" title, and not where he sells knowing that he has none at all to the property (*Bowman v. Hyland* 8 Ch. D. 588, cited *WHATSOEVER*), or none to part of it (*Re Jackson and Haden* [1905] 1 Ch. 603; affirmed in C.A. [1906] 1 Ch. 412, applying *Re Deighton and Harris* [1898] 1 Ch. 458, cited *RELATING*, and *Nelthorpe v. Holgate* 1 Coll. 203). Cp. *Re Hucklesby and Atkinson* 54 S.J. 342; *Proctor v. Pugh* [1921] 2 Ch. 256. See further UNWILLING. Where there has been a misrepresentation of the property, see *Holliwell v. Seacombe* [1906] 1 Ch. 426; *Re Simpson and May* 53 S.J. 376; *Merrett v. Schuster* [1920] 2 Ch. 240.

(6) As to conditions prohibiting objections, see INVESTIGATING; *Spratt v. Jeffery* 10 B. & C. 249, inf.

(7) A direction that goods bequeathed are "to be enjoyed with and go with the title" of real or leasehold property, will not create an executed or executory trust, or cut down the legatee's interest in the goods to a life estate (*Re Johnson* 26 Ch. D. 538, in which case were cited the previous cases on the construction of a gift of chattels to go with a title). See HEIRLOOM.

(8) "Title accepted," "will not inquire into" title: see *Spratt v. Jeffery* 10 B. & C. 249. See also INVESTIGATION.

(9) "Title" did not come "in question," within ss.56, 60, County Courts Act 1888 (c. 43), where the claim arose in respect of the possession of a HEREDITAMENT the right to which possession was not seriously disputed, e.g. an ordinary action of trespass (*Hawkins v. Rutter* [1892] 1 Q.B. 668); *secus*, when so disputed (*Howorth v. Sutcliffe* [1895] 2 Q.B. 358). The title to the land was not "in question" in an action for rent charge issuing out of such land (*Bassano v. Bradley* [1896] 1 Q.B. 645).

(10) When "title to any corporeal or incorporeal hereditament shall have come in QUESTION" (s.120, County Courts Act 1888 (c. 43)), there was an absolute right of appeal irrespective of value (*Millett v. Ballard* [1904] 2 K.B. 593, cited EJECTMENT).

(11) In any case of assault or battery "in which any question shall arise as to the title to any lands, tenements, or hereditaments, or any interest therein or accruing therefrom," the justices' jurisdiction was ousted (s.46, Offences Against the Person Act 1861 (c. 100)); there, "title" governed the whole of the succeeding words (*per* Channell J., *R. v. French* [1902] 1 K.B. 637); it meant, where "title" was being asserted or denied, e.g. where the defendant, claiming the land to be his, was placing bricks thereon, in assertion of that claim, which the complainant tried to prevent (*R. v. Pearson* L.R. 5 Q.B. 237); *secus*, where two commoners quarrelled about the alleged improper use of the common by one of them (*R. v. French* sup.). Cp. BONA FIDE.

(12) Covenants for title: As to the qualification of a vendor's covenant implied by s.7(1)(A), Conveyancing Act 1881 (c. 41): see *David v. Sabin* [1893] 1 Ch. 523. See Law of Property Act 1925 (c. 20), s.76(1).

(13) As to the covenants for title implied by s.76, Law of Property Act 1925 (c. 20), see *David v. Sabin* [1893] 1 Ch. 523; *Turner v. Moon* [1901] 2 Ch. 825, cited CONVEY; *Great Western Railway v. Fisher* [1905] 1 Ch. 316; *Stoney v. Eastbourne* [1927] 1 Ch. 367; *Eastwood v. Ashton* [1915] A.C. 900. As to other covenants for title, see FURTHER ASSURANCE; INCUMBRANCE; QUIET ENJOYMENT. As to the construction of these covenants, see Elph., ch. 30; PURCHASE FOR VALUE.

(14) "Evidence of the title" to goods: see *Distillers Co. v. Inland Revenue Commissioners* 36 Sc. L.R. 538, cited WARRANT.

(15) "Title to toll": see *Hunt v. Great Northern Railway* 20 L.J.Q.B. 349, cited TOLL.

(16) "Formerly it was not so, but now the title of an Act of Parliament forms part, and a very important part, of the Act" (*per* Lindley M.R., *Fielden v. Morley* [1899] 1 Ch. 1, cited PURSUANCE); see further *A.-G. v. Margate Pier Co.* [1900] 1 Ch. 749, cited PUBLIC DUTY; *Jones v. Shervington* [1908] 2 K.B. 539, cited SEALED; *London County Council v. Bermondsey Bioscope Co.* 80 L.J.K.B. 146, cited TERMS. But the title of an Act of Parliament will not necessarily restrict the meaning of the Act, e.g. s.3, Wills Act 1861 (c. 114), is applicable to the will of an alien, although the title of the Act is "An Act to amend the Law with respect to Wills of Personal Estate made by British Subjects" (*Re Groos* [1904] P. 269). Cp. MARGINAL NOTES. See hereon 1 Bla. Com. 183. See SHORT TITLE.

(17) "Title, addition, or description." Stat. Def., for the Dentists Act 1878 (41 & 41 Vict., c. 33): see Medical Act 1886 (c. 48), s.26. See further *Brown v. Whitlock* 67 J.P. 451, cited ADDITION.

(18) "There can be in general no copyright in the title or name of a book" (*per* James L.J., and Jessel M.R., *Dicks v. Yates* 18 Ch. D. 93; see further *Hollinrake v. Truswell* [1894] 3 Ch. 420, and *Maxwell v. Hogg* 2 Ch. 307, both cited COPYRIGHT; *Crotch v. Arnold* 54 S.J. 49); though the title or name may be a trade-mark (*Dicks v. Yates* 18 Ch. D. 76; on which case see *Mack v. Peter* L.R. 14 Eq. 431; *Kelly v. Byles* 13 Ch. D. 682), or the adoption of a title or a name may be a doubtful passing off; see *Licensed Victuallers Newspaper Co. v. Bingham* 38 Ch. D. 139; *Outram v. London Evening Newspaper* 55 S.J. 255.

(19) Title of honour: see DIGNITY; *Cowley v. Cowley* [1900] P. 118, 305; [1901] A.C. 450; *Re Rivett-Carnac* 30 Ch. D. 136, cited INCORPOREAL HEREDITAMENT.

Slander of title: see SLANDER; TRADE LIBEL.

Bad title: see BAD. Cp. GOOD TITLE.

Title "accrued": see ACCRUE.

Title "to be approved": see SUBJECT TO.

See ABSTRACT; BEST TITLE; DEDUCE; DEMISE; POSSESSORY; PRETENCED. See further PASSIVE; PREPARE; ROOT.

TO. (1) Where a verb of obligation is put in the infinitive mood—*e.g.* the tenant "to paint" once every fifth year—an agreement, or covenant, would obviously be created.

(2) "To," or its equivalent "unto," or "from," a time or place, generally but not necessarily, excludes the time or place mentioned (*Halsey's Case* Latch, 183; *R. v. Gamlingay* 3 T.R. 513; but see on this last case *R. v. Knight* 7 B. & C. 413). See further FROM; cp. UNTIL.

(3) "To" wills often mean "towards." The plaintiff effected a marine policy, subject to rules one of which was that ships were not to sail from any port on the east coast of Great Britain "to" any port in the Belts between December 20 and February 15. The plaintiff's vessel sailed on February 8 for a port in the Belts, and was lost; held, that the rule in question was a warranty and not an exception; and that the word "to" in the rule meant "towards" and not "arriving at" (*Colledge v. Harty* 6 Ex. 205).

(4) "To or towards": see *R. v. M'Carthy* [1903] 2 Ir. R. 156, cited INTIMIDATE.

(5) Revocation of every gift "to, or for the benefit of" A: see *Re Whitehorne* [1906] 2 Ch. 121, cited REVOKE.

(6) Injury "to" a thing: see *Burger v. Indemnity, etc., Assurance* [1900] 2 Q.B. 348, cited IN RESPECT OF.

TO AND AMONGST. See AMONG.

TO AND FROM. (1) See *Callard v. Beeney* [1930] 1 K.B. 353, cited RIGHT OF WAY.

(2) An education authority's liability to pay for or provide "transport to and from the school" under s.39 of the Education Act 1944 (c. 31) is not fulfilled by providing or paying for transport to within three miles of the school. "To and from the school" means from and to the child's home to and from the school (*Surrey County Council v. Ministry of Education* [1953] 1 W.L.R. 516).

TO ARRIVE. See ARRIVE.

TO BE. This phrase is one of futurity, and may (1) create a covenant, (2) impose a qualification of, or conditions precedent to, a covenant, or (3) imply a stipulation, or (4) go to define the condition of a gift, or of a state of things, or (5) even amount to a grant.

(1) and (2). When a clause in a deed prescribing something to be done or permitted, is introduced by “to be,” or a participle, the effect, speaking generally, is to create a covenant on the part of the person by whom the thing is to be done or permitted, or to impose a condition precedent on, or a qualification of, some covenant in the deed. The context determines which of these meanings is to prevail. Thus, where rent is “to be paid” (*Bower v. Hodges* 22 L.J.C.P. 194), or if the ordinary words at the commencement of the reddendum of a lease—“yielding and paying”—are used (Elph. 419, 420, 464–466; Touch. 162; *Sear v. House Property Co.* 16 Ch. D. 387), a covenant to pay is created. But where a tenant covenants to repair, he “to be allowed” or the lessor “allowing” necessary timber, such latter clause prescribes a condition precedent, or qualification, of the covenant to repair (*Thomas v. Cadwallader Willes*, 496; see further Elph. 420, 421, 464–466 (Woodf. (24th ed.), 525 *et seq.*).

(3) The *ad valorem* stamp duty on a conveyance on sale, subject to a mortgage, was chargeable, not only on the purchase money, but also on the mortgage debt if it was “to be afterwards paid by the purchaser” (Stamp Act 1815 (c. 184), Sched.); that meant, cases where it was “stipulated” that the purchaser should pay it (*Chandos v. Inland Revenue Commissioners* 6 Ex. 464). To remedy that ruling see s.10, Stamp Act 1852 (c. 59); s.73, Stamp Act 1870 (c. 97); s.57, Stamp Act 1891 (c. 39), on which see *Mortimore v. Inland Revenue Commissioners* 33 L.J. Ex. 263, and *Swayne v. Inland Revenue Commissioners* [1900] 1 Q.B. 172, both cited SUBJECT TO.

(4) A condition of a gift is prescribed by “to be” in such a phrase as TO BE BORN. See NOT TO BE; GIVEN; SUPPLIED.

TO BE BORN. (1) The ordinary primary legal meaning of “to be born,” or “to be begotten,” includes past as well as future children (*Doe d. James v. Hallett* 1 M. & S. 124; cp. TO BE PASSED), and the introduction of the word “hereafter” does not alter that rule of construction (*per Chatterton V.-C.*, *Harrison v. Harrison* Ir. Rep. 10 Eq. 296). That construction, however, may by a context give way to the ordinary meaning of the English language whereby those phrases express futurity (*per Fry L.J.*, *Locke v. Dunlop* 39 Ch. D. 387). That case was an instance in which the latter construction was adopted.

(2) “Gifts to, or trusts for, children ‘to be born,’ or ‘to be begotten,’ include those already born or begotten; and *e contra*” (Elph. 328; see also *ibid.* 236).

(3) In class gifts to children “to be born,” or “to be begotten,” “the established rule is that if the gift be immediate, so that it would, but for the words in question, have been confined to children (if any) existing at the testator’s death, they will have the effect of extending it to ‘all’ the children who shall ever come into existence; since in order to give the words in question *some* operation, the gift is necessarily made to comprehend the whole” (3 Jarm. (8th ed.) 1689, 1690).

(4) “This rule of construction, however, does not apply to general pecuniary legacies, where the effect of letting in children born after the death of the testator would be to postpone the distribution of the general estate (out of which the legacies are payable), until the death of the parent of the legatees” (*ibid.* 1690).

(5) “It seems to be established, too, that the expression children *to be born*, or *to be begotten*, when occurring in a gift, under which *some* class of children born after the death of the testator would, independently of this expression of futurity, be

entitled, so that the words may be satisfied without departing from the ordinary construction, that construction is unaffected by them" (*ibid.* 1692).

(6) "It has been decided, too, that the words 'which shall be begotton,' or 'to be begotten,' annexed to the description of children or issue, do not *confine* the devise to future children; but that the description will, notwithstanding these words, include the children or issue in existence before the making of the will"; "and it seems that even the words 'hereafter to be born' will not exclude previously-born issue" (*ibid.* 1693).

(7) In *Gilbert v. Boorman* (11 Ves. 238), Grant M.R., held that a gift of residue to A "and all the other children 'hereafter' to be born" of B, on attaining 21, excluded all children born after one of them had attained 21.

See BORN; HATH; MAY BE; THEREAFTER TO BE BORN; WHEN.

TO BE CANCELLED. Charterparty "to be cancelled" in certain events: see *Adamson v. Newcastle Steamship Insurance* 4 Q.B.D. 462.

See CANCEL.

TO BE DONE. "Matter or thing done, or to be done," in the United Kingdom (s.14(4), Stamp Act 1891 (c. 39)): see *Inland Revenue Commissioners v. Maple* [1906] 1 K.B. 591; [1906] 2 K.B. 834, cited DONE, but the decisions in that case of Walton J., and of the C.A., were reversed by House of Lords [1908] A.C. 22.

TO BE ENTAILED. See *Jervoise v. Northumberland* 1 Jac. & W. 559; TO BE SETTLED; SETTLE; COURSE.

TO BE HELD. "To be held and enjoyed accordingly": see *Re Harcourt, Portman v. Portman* [1922] 2 A.C. 473, cited HEIR. See also TO GO AND BE HELD.

TO BE LET. See LET.

TO BE PAID. (1) This phrase, in an agreement *inter partes*, creates a covenant to pay (*Bower v. Hodges* 22 L.J.C.P. 194).

(2) In a will it is generally synonymous with payable; see further 2 Jarm (8th ed.) 1345. In *Martineau v. Rogers* (25 L.J. Ch. 398), "to be paid" was construed "VESTED."

(3) A direction that a legacy to a married woman is "to be paid" to her, nullifies a restraint on alienation (*Re Fearon* 45 W.R. 232, applying *Re Bown* 27 Ch. D. 411). So the restraint is gone when the legatee becomes entitled to payment (*Re Holmes* 67 L.T. 335; *Re Bankes* [1902] 2 Ch. 333; *Russell v. Lawder* [1904] 1 Ir. R. 328); so, where the direction is "to raise and pay"; *secus*, where the legacy is "to be held upon trust" for the married woman (*Re Grey* 34 Ch. D. 712).

See PAID.

TO BE PASSED. "Any Act 'to be' passed in the present session of Parliament," *semble*, means the same as "any Act 'passed' in the present session"; for "the session is a thing of continuity; therefore, when the legislature speak of any Act 'to be' passed in that session, they mean any Act that shall be passed from the commencement to the conclusion of the session, embracing both the past and future portions of it" (*per* Ellenborough C.J., *Nares v. Rowles* 14 East, 518). Cp. PASSING; TO BE BORN.

TO BEARER. See BEARER.

TO CEASE. “To cease on return to England”—for the meaning of these words in respect of an annuity, see *Orpen v. Moriarty* [1912] 1 Ir. R. 485.

TO GO AND BE HELD. “To go and be held” with settled realty (heirlooms): see *Re Beresford Hope* [1917] 1 Ch. 287. See also **TO BE HELD**.

TO HAVE AND TO HOLD. See **HAVE AND TO HOLD**.

TO OR FROM. See **INTO**.

TO ORDER. If a warehouseman gives a warrant of goods to be held “to order” of A, and, without getting the warrant, delivers the goods at A’s request to someone other than the holder of the warrant, the warehouseman will be responsible for the goods to the innocent holder for value of the warrant (*London & County Bank v. Fulford* 2 T.L.R. 703).

See **ORDER**; **NEGOTIABLE**.

TO THE BEST OF THEIR JUDGMENT. In establishing a reasonable basis for the assessment of VAT in default of proper returns, the Customs and Excise Commissioners were held to have satisfied their duty to act “to the best of their judgment” for the purposes of s.31(1) of the Finance Act 1972 (c. 41) by inspecting the taxpayer’s books and noting takings during a “test” period (*Van Boeckel v. Customs and Excise Commissioners* [1981] 2 All E.R. 505).

TO THE EFFECT. See **IN THE FORM**; **TENOR**.

TO THE EXTENT. A guarantee for goods “to the extent of” a specified sum means “not exceeding” that sum, and does not fix the sum as the minimum of the supply of goods (*Dimmock v. Sturla* 15 L.J. Ex. 65).

TO THE USE. See *Savill v. Bethell* [1902] 2 Ch. 523, cited **USE**.

TO THE VALUE. See *Lavell v. Ritchings* [1906] 1 K.B. 480, cited **TOOL**.

TOBACCO. Premises used for the business of a tea-shop at which cigarettes were sold at the cashier’s desk were held not to be “used for the business of the sale of tobacco, cigars and cigarettes” within a covenant in a lease (*A. Lewis & Co. (Westminster) Ltd. v. Bell Property Trust Ltd.* [1940] Ch. 345).

“Tobacco,” “tobacco dealer,” “tobacco manufacturer,” “tobacco refuse,” “tobacco products.” Stat. Def., Customs and Excise Act 1952 (c. 44), s.307; Finance Act 1976 (c. 40), s.4; Tobacco Products Duty Act 1979 (c. 7), s.1(1).

“Stripped tobacco”: see **STRIP**.

“Tobacco works”: see **NON-TEXTILE FACTORIES**.

“Fit for sale”: see **FIT FOR**.

TOFT. (1) “‘Toft’ is a place wherein a house once stood, but it is now all fallen, or puld downe” (Termes de la Ley): see further *Hill v. Grange Plowd.* 170; *Skidmore v. Boucheir* 2 Show. 93; Cowel.

(2) “Toft is the place where a house has been, and now there is none, and the site of the house can be seen, and by this name it will pass in a grant: 21 Edw. 4, 52, Pl. 15; Touch. 95. Spelman says that the house must have been in the country” (Elph. 622).

(3) “Tofts of ground remaining unbuilt” (Act for the relief of certain Incumbents living in the City of London (44 Geo. 3, c. lxxxix), s.13) included the sites of premises demolished by enemy action which were standing waste and unoccupied (*City of London Brewery & Investment Trust v. Allhallows Churchwardens* 97 L.J. 107).

TOGETHER WITH. (1) This phrase does not mean “and also,” but “at the same time as”; therefore, a bill of sale and its affidavit must be registered simultaneously (*Grindell v. Brendon* 28 L.J.C.P. 333). See **THERewith**. Cp. *per* Lord Trayner, *Alexander’s Trustees v. Muir* 40 Sc. L.R. 16, cited **ALSO**.

(2) Devise of rent of A to C B for life and, after his death, the same rent “together with” testator’s other rents to X Y; held, on review of the will, that “together with” did not incorporate the time when the gift of the other rents was to become operative, and that X Y took them, on the death of the testator (*Doe d. Annandale v. Brazier* 5 B. & Ald. 64).

(3) “Together with its contents.” A gift of a house together with its contents is one single gift, consequently the beneficiary cannot disclaim the gift of the house and accept the gift of the contents (*Re Joel* [1943] Ch. 311).

Testator’s name “together with” devisee’s own surname: see **Name and Arms Clause**, under **NAME**.

See **WITH**.

TOKEN. “Coin, token, or other article, used” as an instrument of gaming (Vagrant Act Amendment Act 1873 (c. 38), s.3), *semble*, did not include betting slips given to a bookmaker by his customers for the purpose of wagering on a horse race (*Lester v. Quested* 85 L.T. 487, cited **GAME OF CHANCE**). See **BET**.

TOLERATION ACT. Toleration Act 1688 (c. 18), confirmed by 10 Anne, c. 2; see hereon **PUBLIC ACT OF PARLIAMENT**.

TOLL. (1) “Toll,” or *tolnetum* (or *thoelonio*), is a sum of money which is taken in respect of some benefit (*per* Bramwell and Willes, arg., citing Com. Dig. *Toll*, in *Adey v. Trinity House* 22 L.J.Q.B. 3)—the benefit being the temporary use of land—*e.g.* fair or market tolls, toll thorough, toll traverse, anchorage toll, and harbour tolls (*Mayor of Exeter v. Warren* 5 Q.B. 773; *The London Wharves* 1 Bl. W. 581). Therefore, harbour rates (under a private Act) are “tolls” (*Adey v. Trinity House* 22 L.J.Q.B. 3); but payments to a railway company for the use of locomotive power, as distinguished from the use of their railway, are not (*Hunt v. Great Northern Railway* 20 L.J.Q.B. 349).

(2) “As regards tolls for passing over land, the passage in 2 Rol. Ab. 171 D, and in 16 Vin. Ab. (2nd ed.) 577 D (a), is a very strong authority against the right to take them, in the absence of a grant from the Crown” (*per* Lord Lindley, *Simpson v. A.-G.* [1904] A.C. 509).

(3) *Semble*, the proper sense of the word “toll,” as applied to a railway, is a payment in respect of the use of the railway itself—the person paying the toll being himself the carrier of the goods or persons along the railway (*Wallis v. London & South Western Railway* L.R. 5 Ex. 62; *Brown v. Great Western Railway* 9 Q.B.D. 744; *North Central Wagon Co. v. Manchester, Sheffield & Lincolnshire Railway* 32 Ch. D. 477; 35 *ibid.* 191; 13 App. Ca. 554), and those cases show that that was the meaning of the word as used in ss.95–97, Railways Clauses Consolidation Act 1845 (c. 20). A railway company’s carrier charge is therefore not a toll: see lastly cited cases and *Gorton v. Bristol & Exeter Railway* 30 L.J.Q.B. 273, and *Pryce v. Mon-*

mouth Railway 4 App. Ca. 197, for distinction between "charges" and "tolls." "Tolls" in s.90, *semble*, applied to traffic generally, and was not limited to tolls strictly so called (*Evershed v. London & North Western Railway* 3 Q.B.D. 134; 3 App. Ca. 1029); but (*per* Bramwell L.J., in this last case), the "word does not include a charge for cartage or collection; it only includes charges for receiving upon transit along, and delivery from, the railway, of the goods entrusted to the company" (47 L.J.Q.B. 285). "Tolls" in s.87, Railways Clauses Consolidation Act, *sup.*: see *Simpson v. Denison* 10 Hare, 60; *Great Northern Railway v. South Yorkshire Railway* 9 Ex. 644.

(4) "Tolls," in ss.98 and 99, Railways Clauses Consolidation Act 1845 (*sup.*), was used in its wider sense, and included rates and charges for goods carried by a railway company in their own carriages or trucks (*Moreing v. London & North Western Railway* [1905] 2 K.B. 113, cited ON DEMAND).

(5) "Tolls" (s.11, Regulation of Railways Act 1873 (c. 48)) was not to be restricted to tolls payable according to a mileage scale or specified to be maximum tolls, but included tolls levied for the use of a railway or canal (*Warwick & Birmingham Canal Navigation v. Birmingham Canal Navigation* 3 Ry. & Can. Traffic Ca. 113).

(6) (a) Toll, as regards fairs and markets: see *Casewell v. Cook* 31 L.J.M.C. 185; see on this case *Londonderry v. M'Elahinney* Ir. Rep. 9 C.L. 61.

(b) Toll is not incident of common right to a fair or market. Accordingly, there must be found some subsidiary grant of the right to take tolls by express mention. The amount of the tolls need not be specified in the grant, and in the absence of specific mention of an amount, the right will be to take tolls of a reasonable amount. The right to take tolls may be established by prescription. At common law, tolls for goods sold in a fair or market are due from the buyers and not from the sellers; but from time to time successful attempts have been made to establish a right to take tolls from sellers (*A.-G. v. Colchester Corporation* [1952] Ch. 586).

(7) Stallage may pass under the word "toll" (*Bennington v. Taylor* 2 Lutw. E. ed. 1718, 642; *Hickman's Case* 2 Rol. Ab. 123; *Hill v. Priour* 2 Show. 34; *Lockwood v. Wood* 6 Q.B. 31).

(8) "Tolls" (s.4, Land Tax Act 1797 (c. 5)): see *Charing Cross Bridge Co. v. Mitchell* 24 L.J.Q.B. 249, cited by Swinfen Eady J., in *Central London Railway v. Land Tax Commissioners* [1911] 1 Ch. 467, cited LAND TAX COMMISSIONERS.

(9) As to construction of an exemption from toll: see *Hill v. Priour* *sup.* See hereon *Termes de la Ley*, *Tol* or *Tolne*; Cowel; Jacob.

(10) As to the forfeiture of the right to collect toll if the thing in respect of which it is granted is not properly maintained, see *A.-G. v. Simpson* [1901] 2 Ch. 671; in House of Lords, *nom. Simpson v. A.-G.* [1904] A.C. 476.

(11) "Tolls . . . ferries . . . and other concerns of a like nature having profits" (Income Tax Act 1918 (c. 40), Sched. A, No. 3, r. 3): see *Inland Revenue Commissioners v. Forth Conservancy Board* 98 L.J.P.C. 34, affirmed 47 T.L.R. 429.

Stat. Def., Railway Clauses Consolidation Act 1845 (c. 20), s.3.

Turnpike tolls. Stat. Def., Wales (Highways) Act 1844 (c. 91), s.114. See TURNPIKE ROAD.

See CARRIAGE; CUSTOM; FAIR OR MARKET TOLLS; PASSAGE; RATE; RENTS AND TOLLS; WITH ALL LIBERTIES.

TOLL THOROUGH. Is a toll for passing along a public highway, whether the highway be a road, a river, a ferry, a bridge, or the sea, and it cannot be claimed by prescription, but must be supported (if at all) by a good consideration performed in

respect of the precise locality where the toll is claimed, *e.g.* the reparation of “the” highway on which the toll is claimed (*Smith v. Shepherd* Cro. Eliz. 710; *Hill v. Smith* 4 Taunt. 520; see ANCHORAGE TOLL). See hereon *Brecon Markets Co. v. Neath & Brecon Railway* L.R. 7 C.P. 555; 8 *ibid.* 157. Cp. TOLL TRAVERSE.

TOLL TRAVERSE. Is a toll payable for passing over the soil of another, or over soil which, though now a public highway, was once private, and which (as a matter of precise proof, or as a legal presumption) was dedicated subject to the toll. It can be claimed by prescription and, like a market toll, may vary in amount according to the varying value of money (*Pelham v. Pickersgill* 1 T.R. 660; *Lawrence v. Hitch* L.R. 3 Q.B. 521, cited by Stirling L.J., in *A.-G. v. Simpson* [1901] 2 Ch. 719, but see hereon *per* Lord Macnaghten *Simpson v. A.-G.* [1905] A.C. 488, and *per* Lord Lindley, *ibid.* 510). See hereon *Brecon Markets Co. v. Neath & Brecon Railway* L.R. 7 C.P. 555, cited TOLL THOROUGH; and on the difference between toll thorough and toll traverse, see *R. v. Salisbury* 8 A. & E. 716.

Cp. MODUS.

TO-MORROW. See *Duncan v. Topham* 18 L.J.C.P. 310.

TON. A contract for the sale of goods by “the ton, long weight,” was good, as “the ton, long weight,” though it consisted of 240,000 lb. avoirdupois and was more than 20 cwt. statutory measure, was yet a multiple of the standard pound, within s.9, Weights and Measures Act 1824 (c. 74) (*Giles v. Jones* 11 Ex. 393). See MULTIPLE.

Stat. Def., Mineral Workings Act 1951 (c. 60), s.41(1); Weights and Measures Act 1963 (c. 31), Sched. 1, Part. V.

“Tons register.” Stat. Def., Customs and Excise Management Act 1979 (c. 2), s.1.

“Tons burden”: see BURDEN.

TONIC. A tonic operates in the same way as a medicine. It aims at restoring healthy functioning (*Nairne v. Stephen Smith & Co.* [1943] 1 K.B. 17).

TONNAGE. (1) Tonnage was “a custome or impost paid to the King for merchandise carried out, or brought in ships, or such like vessels, according to a certain rate upon every tun” (Cowel).

(2) “Tonnage in coal” (Coal Mines Act 1930 (c. 37), s.18(1)) meant tonnage in coal as it came out of the pit in the tubs before any dirt was picked, screened, washed or otherwise taken out of the coal (*Re Midland (Amalgamated) District (Coal Mines) Scheme* 152 L.T. 212).

See GROSS; REGISTER.

TOO NEAR. No. 20 of the River Tyne Bye-Laws 1884, without laying down a hard-and-fast rule, means that the incoming vessel is not to come in “too near,” *i.e.* that she must give room enough, and “she must not run up so close as only to leave just room” (*per* Esher M.R., *The John O’Scott* [1897] P. 64, interpreting *The Harvest* 11 P.D. 90).

TOOL. (1) What were “tools” or “implements” of trade within, *e.g.* s.44(2), Bankruptcy Act 1883 (c. 52), was a question of fact in each case; “books, or even desks, would be implements of trade of a teacher of languages” (*per* Macdonald L.J.C., *Macpherson v. Drummond* 43 Sc. L.R. 102); see Bankruptcy Act 1914 (c. 59), s.38; *Re Sherman* 32 T.L.R. 231.

(2) “Tools and implements of his trade to the value of £5” (s.147, County Courts Act 1888 (c. 43) (which was also applicable to s.4, Law of Distress Amendment Act 1888 (c. 21)), included the sewing machine of a sempstress (*Churchward v. Johnson* 54 J.P. 326), and the hired cab of a cab-driver (*Lavell v. Ritchings* [1906] 1 K.B. 480); and if such a chattel was the only one on the premises belonging to the execution-debtor, the exemption extended to it though its value was much in excess of £5—“to the value of £5” meant that excepted articles to “at least” that value had to be left on the premises (*per Alverstone C.J.*, *Lavell v. Ritchings*; *Boyd v. Bilham* [1909] 1 K.B. 14; *MacGregor v. Clamp* [1914] 1 K.B. 288).

(3) *Semble*, a threshing machine is an implement of trade, within the conditional exemption from distress (*Fenton v. Logan* 2 L.J.C.P. 102; *Gonsky v. Durrell* [1918] 2 K.B. 288). Cp. PUBLIC TRADE.

(4) Safety lamps used in mines were “tools” within s.7(3), Conspiracy and Protection of Property Act 1875 (c. 86): see *Fowler v. Kibble* [1922] 1 Ch. 487.

See MACHINE; MATERIALS.

TOP. See LOP.

TOPMOST STOREY. See STOREY.

TORRA. “Torra,” or “tor,” a mount or hill (Jacob).

TORRENS’ ACT. Artizans and Labourers Dwellings Act 1868 (c. 130).

TORT. (1) “Action founded on tort” (s.5, County Courts Act 1867 (c. 142)—s.45, County Courts Act 1959 (c. 22))—an action of detinue, or trover—is within this phrase (*Bryant v. Herbert* 3 C.P.D. 389; *Cohen v. Foster* 61 L.J.Q.B. 643; see further *Du Pasquier v. Cadbury* [1903] 1 K.B. 104); so is an action by a bailor against a bailee for not safely keeping the thing bailed (*Turner v. Stallibrass* [1898] 1 Q.B. 56); so is an action against a carrier for delivering goods to an insolvent consignee after notice of a stoppage *in transitu* (*Pontifex v. Midland Railway* 3 Q.B.D. 23), or for personal injuries to his passenger occasioned by negligence (*Taylor v. Manchester, Sheffield & Lincolnshire Railway* [1895] 1 Q.B. 134, and *Kelly v. Metropolitan Railway* [1895] 1 Q.B. 944, both cited CONTRACT; see further *Meux v. Great Eastern Railway* [1895] 2 Q.B. 387, cited LUGGAGE). So, generally, an action is “founded on tort” where it is, in substance, for negligence or breach of duty, even though relating to a contractual obligation (*Sachs v. Henderson* [1902] 1 K.B. 612; *Lyles v. Southend-on-Sea* [1905] 2 K.B. 1, cited PUBLIC DUTY). See further *Edwards v. Mallan* [1908] 1 K.B. 1002, *inf.* The provision of s.116, County Courts Act 1888 (c. 43) (now County Courts Act 1959 (c. 22), s.47), depriving the plaintiff of high court costs if less than £10 is recovered in an action “founded on tort,” has no application where, besides damages, he claims and recovers other substantial relief, *e.g.* an injunction (*Keates v. Woodward* [1902] 1 K.B. 532; *Deverell v. Milne* [1920] 2 Ch. 52), or an order for the delivery of goods detained (*Du Pasquier v. Cadbury sup.*).

(2) “Action of tort” (s.10, County Courts Act 1867 (c. 142)—County Courts Act 1959 (c. 22), s.46): trover is within this phrase (*Clapham v. Oliver* 30 L.T. 365). So of an action for an unskilful operation, *e.g.* a dental operation causing damage, illness and pain: see *Edwards v. Mallan* [1908] 1 K.B. 1002; see further *Sachs v. Henderson sup.*

(3) Proceedings under s.23, Highways and Locomotives Amendment Act 1878

(c. 77), for expenses to highway caused by extraordinary traffic, were founded on tort, and ceased on the death of the causator (*Story v. Sheard* [1892] 2 Q.B. 515). See also *Chesterfield Rural Council v. Newton* [1904] 1 K.B. 62. See CONTRIBUTION.

(4) "Tort," in s.12, Married Women's Property Act 1882 (c. 75), did not include an action by a wife against her husband for rescission of a deed of separation on the ground that she had been induced to execute it by false and fraudulent misrepresentations, and such an action was therefore maintainable: see *Hulton v. Hulton* [1917] 1 K.B. 813.

(5) An action by a husband against his wife for recovery of land was an action in "tort" within s.12 of the Married Women's Property Act 1882 (c. 75), and was therefore prohibited. The right course was to apply in a summary way under s.17 (*Bramwell v. Bramwell* [1942] 1 K.B. 370).

(6) To constitute a joint tort there must be one *damnum* and one *injuria*: see *The Koursk* [1924] P. 140; *Brooke v. Bool* 97 L.J.K.B. 511.

Executor "de son tort": see EXECUTOR.

Cp. MISFEASANCE.

TOTAL INCOME. A taxpayer's "total income" for the purposes of the proviso to s.27(2) of the Income and Corporation Taxes Act 1970 (c. 10) was held not to include his wife's overseas income not chargeable to United Kingdom tax (*I.R.C. v. Addison* [1984] 1 W.L.R. 1264).

Stat. Def., Income Tax Act 1952 (c. 10), s.524; Income and Corporation Taxes Act 1970 (c. 10), s.528(1). See INCOME.

TOTAL LOSS. (1) As regards a marine insurance, "the 'total loss' of the thing insured is the absolute destruction of it by the wreck of the ship" (*per Mansfield C.J.*, *Cocking v. Fraser*; Park, 247, cited SPECIE, which see further).

(2) "Since the days of *Davy v. Milford* (15 East, 559, on which case see *Janson v. Ralli* 25 L.J.Q.B. 300), it seems that the expression 'total loss' is an ambiguous one; it may mean a total loss of the whole subject-matter of insurance, or a total loss of part" (*per Byles J.*, *Wilkinson v. Hyde* 27 L.J.C.P. 120).

(3) A total loss is either (1) actual, or (2) constructive—"actual" when the subject-matter of insurance is either wholly destroyed, or so damaged that it would be impracticable to repair the injury (*Moss v. Smith* 9 C.B. 103); "constructive," when the subject-matter, although still in existence, is either actually lost "to the owners," or beneficially lost to them and notice of abandonment has been given to the underwriters. As regards a policy, there is a constructive total loss when the ship goes to the bottom of the sea, though the underwriters may, by mechanical skill and appliances, bring her up again (*The Blairmore* [1898] A.C. 593).

(4) "A constructive total loss is as much a total loss as an actual total loss, and consequently, unless a different intention appears from the terms of the policy, an insurance against total loss includes a constructive, as well as an actual, total loss. 'A constructive total loss in insurance law is that which entitles the insured to claim the whole amount of the insurance, on giving due notice of abandonment' (Arn. (13th ed.) s.1091). The notice of abandonment is a necessary preliminary to a claim for a constructive total loss. . . . The notice of abandonment is an offer made by the shipowner to the underwriter to vest the property in the ship in the underwriter, so that he may deal with it as his own. Without such an offer the underwriter cannot deal with the ship as his own; it remains the shipowner's property; and such a position is inconsistent with the existence of a claim for a constructive total loss" (*per Bigham J.*, *Western Assurance v. Poole* [1903] 1 K.B. 383, 384); but notice of aban-

donment to the original insurers suffices, and if so given, need not be given to the re-insurers (*Uzielli v. Boston Insurance* 15 Q.B.D. 11, cited *SUE AND LABOUR*; *Cates Tug, etc., Co. v. Franklin Insurance* [1927] A.C. 698).

(5) In determining whether the assured has a right to abandon a vessel as a constructive total loss, the prudent uninsured owner test—*i.e.* whether such an owner would repair her having regard to all the circumstances—is the guide, and, in estimating whether there has been a constructive total loss, the assured is entitled to add the damaged value of the vessel to the cost of her repair (*Macbeth v. Maritime Insurance* [1908] A.C. 144, overruling *Angel v. Merchants' Marine Insurance* [1903] 1 K.B. 811; *Polurrian S.S. Co. v. Young* [1915] 1 K.B. 922). See further ABANDONMENT; *Mansell v. Hoade* 20 T.L.R. 150; *North Atlantic S.S. Co. v. Burr* *ibid.* 266; *Moore v. Evans* [1918] A.C. 185.

(6) The total loss of a ship by abandonment cannot be converted into partial loss by recapture or restoration “after” action brought (*Ruys v. Royal Exchange Assurance* [1897] 2 Q.B. 135). See also *Woodall v. Clifton* [1905] 2 Ch. 257, cited PERPETUITY.

(7) So it has been held that partial loss cannot be recovered under a policy against constructive total loss (*Marten v. Steamship Owners' Underwriting Association* 71 L.J.K.B. 718; *Western Assurance v. Poole* *sup.*, considering *Uzielli v. Boston Insurance* *sup.*); but see s.56(4), Marine Insurance Act 1906 (c. 41).

(8) A policy against total loss of vessel and freight does not become payable by the vessel becoming a constructive total loss if (*e.g.* by Italian law governing the policy) a *pro rata* freight was, in the circumstances, payable, for then there would not be a total loss of the freight (*Price v. Maritime Insurance* [1901] 2 K.B. 412).

(9) On what is a total loss of freight, see *Guthrie v. North China Insurance* 7 Com. Ca. 130.

(10) That the word “only,” in a policy against total loss or constructive total loss, does not operate to strike out the sue and labour clause, see *per* Kennedy J., *Crouan v. Stanier* [1904] 1 K.B. 89.

(11) See also *Cunningham v. Maritime Insurance* [1899] 2 I.R. 257; *Cossmann v. West* 13 App. Ca. 160; *Allen v. Sugrue* 8 B. & C. 561; *Adams v. Mackenzie* 32 L.J.C.P. 92; Arn. (13th ed.) Pt. 3, ch. 28.

(12) Value of ship, how ascertained as regards a constructive total loss: see *Henderson v. Shankland* [1896] 1 Q.B. 525, approving the dictum in Arnold (13th ed.), s.1024, that “new for old” allowance is not applicable where no repairs are done.

(13) Where brass plated steelcord was so badly damaged in transit that it was returned to the consignor for its scrap value, there was a “total loss” within the meaning of art. 32(1) of the Schedule of the Carriage of Goods by Road Act 1965 (c. 37); there being no delivery of the goods (*Worldwide Carriers v. Ardtran* [1983] 1 All E.R. 692).

Stat. Def., “actual total loss,” and “partial loss,” ss.56–58, Marine Insurance Act 1906 (c. 41); “constructive total loss,” s.60, 61; “notice of abandonment,” s.62, *ibid.*; effect of abandonment, s.63, *ibid.*

See CASTAWAY; LOSS; PARTIAL LOSS; SPECIE.

Cp. “wholly disabled,” under WHOLLY.

Total loss: see SALVAGE.

As regards bottomry bond: see LOSS.

TOTALISATOR. The ordinary totalisator is a method of procuring betting or enabling betting to be carried out, in such a way that the mathematically correct

odds are always given (*per* Lord Greene M.R., in *Elderton v. United Kingdom Totalisator Co. Ltd.* [1946] Ch. 57, 63).

“Totalisator”; “Totalisator board.” Stat. Def., Betting, Gaming and Lotteries Act 1963 (c. 2), s.55(1).

“Totalisator odds.” Stat. Def., Finance Act 1952 (c. 33), s.4.

TOTE CLUB. As to the legality of tote clubs, see *Shuttleworth v. Leeds Greyhound Association Ltd.* [1933] 1 K.B. 400; *Streatham Cinemas Ltd. v. John McClaighlan Ltd.* [1933] 2 K.B. 331.

TOTIES QUOTIES. “As often as” (Cowel). See AS OFTEN AS; FROM TIME TO TIME; QUAMDIU.

TOUCH. (1) As to the meaning of a covenant “touching the land”: see *per* Charles J., *Fleetwood v. Hull* 23 Q.B.D. 35, approved by Lindley L.J., *White v. Southend Hotel Co.* [1897] 1 Ch. 767; see further RUN WITH THE LAND.

(2) An arbitration clause that all disputes, etc., “touching these presents, or any clause matter or thing herein contained, or the construction thereof”: held, to include not only the construction of the document itself, but also the question whether the acts complained of were or were not within the matters referred to arbitration (*Willesford v. Watson* 8 Ch. 478; but see on this case *Piercy v. Young* 14 Ch. D. 200; see both cases cited in the judgment in *De Ricci v. De Ricci* [1891] P. 378).

(3) “Touch and concern.” A covenant restricting building operations on a small plot of land was held not to “touch and concern” a neighbouring estate of 1,700 acres for whose benefit it had been expressed to be taken. Therefore the benefit was held not to run with any part of that estate (*Re Ballard’s Conveyance* [1937] Ch. 473); and see *Zetland (Marquis) v. Driver* [1939] Ch. 1. See also HAVING.

“Touching the right”: see RIGHT.

Cp. AFFECT; AFFECTING.

TOUCH-AND-GO. See STRANDING.

TOUR. See EXCURSION OR TOUR.

TOURNE. See TURNÉ.

TOUT. In a libel action (June 13, 1893), Day J., said that “the true meaning of the word ‘tout’ is simply a person who obtains business by solicitation; and not, necessarily, a swindler, though no doubt he might combine the occupations” (37 S.J. 567). In *Asch v. Financial News (The Times)*, June 13, 1893) a jury found the word not libellous.

TOW. (1) A tug towing a vessel under-way, though having her anchor on the ground yet not held thereby, must carry towing lights as prescribed by Art. 3, Regulations for Preventing Collisions at Sea 1897 (*The Romance* 83 L.T. 483, cited AT ANCHOR).

(2) If a tug and a tow “are so attached and are under such management and control that they move practically as one vessel, the tow is responsible for the action of the tug” (*per* Alverstone C.J., *The Devonian* 70 L.J.P.D. & A. 74, stating effect of *M’Cowan v. Baine* [1891] A.C. 401); in such a case they are a “ship” within

s.419(4), Merchant Shipping Act 1894 (c. 60), and if the tug is "in fault," within that provision, so also is the tow (*The Devonian* [1901] P. 221, which case see also as to "attached for the purpose of towing or manoeuvring" in Mersey Rules 1900, r. 4(a)).

(3) As to the duties and liabilities of, and between, tug and tow, see *The Adam W. Spies* 70 L.J.P.D. & A. 25, and cases therein referred to; *The Millwall* (No. 2) [1905] P. 155; *The Harvest Home* [1905] P. 177; *The Hopper Barge and the Knight Errant* 80 L.J.P. 22.

See LIBERTY TO TOW.

TOWAGE. (1) " 'Towage, *towagium*,' is the towing or drawing a ship or barge along the water by men or beasts on land, or by another ship or boat fastened to her" (Cowel). See TOWING-PATH.

(2) "Without attempting any definition which may be universally applied, a towage service may be described as the employment of one vessel to expedite the voyage of another when nothing more is required than the accelerating her progress" (*per* Dr. Lushington, *The Princess Alice* 3 Rob. W. 138; see further *The Charlotte*, *ibid.* 71; *The Strathnaver* 1 App. Ca. 58); and are not the subject of a maritime LIEN (*Westrup v. Great Yarmouth Co.* 43 Ch. D. 241).

(3) In another sense, towage is a shore-duty, "for the liberty of vessels up to the port" (Hale, *De Portibus Maris*, ch. 6); "also that money, or other recompence, which is given by bargemen to the owner of the ground next a river where they tow a barge, or other vessel" (Cowel).

(4) A tug is performing "towage or assistance services" when she is manoeuvring into position to passing towing wires to the vessel to be towed (*The Baltyk* [1948] P. 1). See also *Glen Line v. W. J. Guy & Sons, The Glenaffric* [1948] P. 159, where a tug was "towing" within the United Kingdom Standard Towing Conditions when ready to receive orders from the ship to be towed.

(5) "Whilst towing" (United Kingdom Standard Towage Conditions, cl. 1 and 3): as to when the condition excluding a tug-owner from liability for damage done by a tug "whilst towing" is fulfilled see *The Blenheim (Owners) v. The Impetus (Owners)*, *The Impetus* [1959] P. 111. The fact that, before a tug was in position to obey an order to pick up a rope, it had to make a manoeuvre did not mean that it was not ready to receive that order or that, at the time, it was not "towing" within the meaning of clause 1 (*British Transport Docks Board v. Apollon (Owners)* [1971] 2 All E.R. 1223). Where, after a tow rope had parted, the tug made an independent manoeuvre to avoid the risk of running aground occasioned by the parting of the rope, and fouled the rope with its propeller, the damage occurred "whilst towing" within the meaning of these clauses (*Australian Coastal Shipping Commission v. Wyuna* (1964) 38 A.L.J.R. 321). See also *Howard Smith Industries v. Melbourne Harbour Trust Commissioners* [1970] V.R. 406.

Stat. Def., County Courts Act 1959 (c. 22), s.61.

TOWARDS. (1) A bequest of an annuity to A. "towards the support of her children until they attain 21": held, merely descriptive of the motive of the gift, and that the annuity continued after the children attained 21 (*Farr v. Hennis* [1880] W.N. 194). See SUPPORT.

(2) In pleading a way to a place, the word anciently used was "unto" the place, but "towards" has been introduced in modern times (*per* Littledale J., *Simpson v. Lewthwaite* 3 B. & Ald. 230, 231); the reason for using the latter, and less rigid, word being shown by Kenyon C.J., in *Wright v. Rattray* 1 East, 381.

(3) From A, “towards and unto” B, in an indictment for non-repair of a highway: see *R. v. Downshire* 5 L.J.K.B. 50. See To.

(4) “To or towards”: see *R. v. M’Carthy* [1903] 2 Ir. R. 156, cited INTIMIDATE.
 “With or towards,” see WITH.

TOWER WAGON. A “tower wagon” (Vehicles (Excise) Act 1971 (c. 10), Sched. 4, para. 9(1)(b); Goods Vehicles (Operators’ Licences) Regulations 1969 (No. 1636), Sched. 1, para. 20) is a mobile tower with the sole function of carrying out overhead work; its character is not destroyed by carrying the necessary tools and equipment but it is destroyed by carrying the subject-matter of the work (*Anderson & Healey v. Paterson* [1975] 1 W.L.R. 228). Finance Act 1982 (c. 39), Sched. 5, para. 15.

TOWING-PATH. See *Grand Junction Canal Co. v. Petty* 21 Q.B.D. 273, cited PUBLIC ROAD; *Lea Conservancy v. Button* 6 App. Ca. 685; *Winch v. Thames Conservators* L.R. 9 C.P. 378.

TOWN. (1) “By the name of a towne, villa, a mannor may passe” (Co. Litt. 5 a).

(2) “Towne (ville).” “*Villa est ex pluribus mansionibus vicinata, et collata ex pluribus vicinis*. If a towne be decayed so as no houses remaine, yet it is a towne in law. And so if a borough be decayed, yet shall it send burgesses to the parliament, as Old Salisbury and others doe”—but the glory of Old Sarum was extinguished by the Representation of the People Act 1832 (c. 45)—“It cannot be a towne in law, unlesse it hath, or in time past hath had, a church and celebration of divine service, sacraments, and burials” (Co. Litt. 115 b; see further 1 Bl. Com. 114). In *Elliott v. S. Devon Railway* (17 L.J. Ex. 262), Parke B., said that the legal meaning of the word “town” was “a place with a constable, or a church.” See BOROUGH; TOWNSHIP; VILL; VILLAGE.

(3) But generally in legislation—*i.e.* ss.93, 128, Lands Clauses Consolidation Act 1845 (c. 18); s.11, Railways Clauses Consolidation Act 1845 (c. 20); Towns Improvement Clauses Act 1847 (c. 34)—“town” is not restricted by its legal meaning, but is expounded popularly and means the space which, for the time being, is covered by, or occupied as accessory to, houses collected together in a mass, and in sufficient number to be ordinarily designated as a town; and includes unbuilt-on lands that may lie within the ambit of such collected mass of houses (*Elliott v. South Devon Railway* 2 Ex. 725; *R v. Cottle* 16 Q.B. 412; *London & South Western Railway v. Blackmore* L.R. 4 H.L. 610; *Collier v. Worth* 1 Ex. D. 464; *Deards v. Goldsmith* 40 L.T. 328); but not lands outside such ambit, though within a borough (*Carington v. Wycombe Railway* 3 Ch. 377; *Coventry v. London, Brighton & South Coast Railway* L.R. 5 Eq. 104; *Falkner v. Somerset & Dorset Railway* L.R. 16 Eq. 458).

(4) Observe further that in “modern” Acts “town” will frequently be an expanding word, and not tied to the limits of the locality indicated at the time of its use. Thus, a prohibition in the Rochdale Market Act 1822 (c. lviii), against selling marketable commodities within the “town” of Rochdale elsewhere than in the market, meant the growing town of Rochdale, and not merely that town as it was in 1822 (*Killmister v. Fitton* 53 L.T. 959).

(5) An auctioneer might (without other than his auctioneer’s licence) sell by sample exciseable commodities if their owner was licensed for their sale “in the same town or place” (s.14, Revenue (No. 2) Act 1864 (c. 56)), that meant “same town” in its popular designation, and although (save for the Thames) there are houses all

the way from the City of London to Sydenham, yet the City and Sydenham were not "in the same town," within that section (*Casey v. Rose* 82 L.T. 616).

(6) "Town," in an agreement in restraint of trade, is to be construed in a popular sense, and the introduction of that word in such a phrase as "within the limits of the town of A" is very little, if at all, different from "within the limits of A" (*per Kekewich J., Houghton v. Staines, The Times*, November 19, 1894).

(7) "Town or village green" (Commons Registration Act 1965 (c. 64), s.22(1)) concerns chiefly land which was set aside under the Inclosure Acts, and does not cover land acquired for public pleasure grounds under the Public Health Act 1875 (c. 55) (*Re The Downs, Herne Bay, Kent*, Commons Commissioner, Ref. 219 D 2).

Stat. Def., Licensing Acts 1872 (c. 94), s.74 and 1874 (c. 49), s.32.

"Town or village green." Stat. Def., Commons Registration Act 1965 (c. 64), s.22(1).

TOWNSHIP. "Township" (s.1, Beerhouse Act 1840 (c. 61)): see *Preston v. Buckley* L.R. 5 Q.B. 391.

See HAMLET.

TOYS. Construction kits for making model aircraft and ships are "toys and games" and were subject to purchase tax under Group 20 of Sched. VIII of the Finance Act 1948 (c. 49) (*Customs and Excise Commissioners v. E. Keil & Co.* [1951] 1 K.B. 469).

TRACK. Betting, Gaming and Lotteries Act 1963 (c. 2), s.55(1).

TRADE. (1) Formerly "trade" was used in the sense of an "art or mystery," e.g. that of a brewer (see ART), or a tailor (*Norris v. Staps* Hob. 211; see further INFERIOR TRADESMAN), but now "trade" has the technical meaning of buying and selling" (*per Willes J., Harris v. Amery* L.R. 1 C.P. 148; see also 2 Bl. Com. 476; s.19, Weights and Measures Act 1878 (c. 49); *per Halsbury C., Sao Paulo Railway v. Carter* [1896] A.C. 38; *per Lord Davey, Grainger v. Gough* [1896] A.C. 325; cp. COMMERCE). Thus, a covenant in a lease not to carry on any "offensive" trade does not prohibit a private lunatic asylum, "trade," in such a connection, being only applicable to a business of buying and selling (*Doe d. Wetherell v. Bird* 4 L.J.K.B. 52, cited OFFENSIVE).

(2) But "trade" "may have a larger meaning so as to include manufactures" (*Commissioners of Taxation v. Kirk* [1900] A.C. 588, cited DERIVE). So, the business of a telegraph company is a "trade" as regards house duty (*Bank of India v. Wilson* 3 Ex. D. 108, cited DWELLING-HOUSE, Cleasby B., dissenting). See further APPRENTICE.

(3) "Trade" is not only etymologically but in legal usage a term of the widest scope. It is connected originally with the word "tread" and indicates a way of life or an occupation. In ordinary usage it may mean the occupation of a small shopkeeper equally with that of a commercial magnate. It may mean a skilled craft. Although it is often used in contrast with a profession the word "trade" is used in the widest application in the appellation "trade unions." Professions have their trade unions (*National Association of Local Government Officers v. Bolton Corporation* [1943] A.C. 166).

(4) It is not essential to a "trade" that the persons carrying it on should make, or desire to make, a profit (*per Coleridge C.J., Re Law Reporting Council* 22 Q.B.D. 279, which see also, *inf.*, but see *per Halsbury C., and Lord Davey, sup.*).

(5) (Industrial Courts Act 1919 (c. 69), s.11), used here as synonymous with industry. It included the activities of local authorities (*National Association of Local Government Officers v. Bolton Corporation* sup.).

(6) Trustee savings banking was a “trade” within art. 1 of the Industrial Disputes Order 1951 (No. 1376) (*R. v. Industrial Disputes Tribunal, ex p. East Anglian Trustee Savings Bank* [1954] 1 W.L.R. 1093).

(7) (a) “Trade” (Income Tax Act 1918 (c. 40), Sched. D, Case I; Income Tax Act 1952 (c. 10), ss.123, 526(1); Income and Corporation Taxes Act 1970 (c. 10), ss.109, 526(5)) is used in its ordinary sense in contradistinction to “profession” or “vocation”; systematic purchases of endowment policies were held to be “an adventure or concern in the nature of trade” (*Smith Barry v. Cordy* 176 L.T. 111). See also *Malcolm v. Lockhart* [1919] A.C. 463; *Ryhope Co. v. Foyer* 7 Q.B.D. 485; *Grainger v. Gough* [1895] 1 Q.B. 71; *Brighton College v. Marriott* [1926] A.C. 192; *Edwards v. Bairstow and Harrison* [1956] A.C. 14.

(b) Complicated manipulations of property, companies and trusts, which produce a profit for the taxpayer, may be “trade” within the meaning of these sections, even though they do not fit into any normal category of trade and do not consist of any regular business of buying or selling (*Ransom v. Higgs* [1972] 2 All E.R. 817).

(c) “Landowning, however profitable, is not a trade within the meaning of the income tax code” (*per* Lord Macmillan, in *Fry v. Salisbury House Estate Ltd.* [1930] A.C. 432, 467).

(d) A street betting business, though illegal, is a trade within Case I of Sched. D (*Southern v. A. B.* [1933] 1 K.B. 713).

(e) “Adventure in the nature of trade” (Income Tax Acts, Sched. D, Case I) (see now Income and Corporation Taxes Act 1970 (c. 10), s.526), may include an isolated transaction (a dealing in whisky by a wood-cutter) so as to render the adventurer assessable to income tax (*I.R.C. v. Fraser*, 24 Tax Cas. 498); and may include the purchase of endowment policies with no intention of selling them (*Smith Barry v. Cordy*, 62 T.L.R. 614). And see *Gray and Gillitt v. Tiley*, 26 Tax Cas. 80 (profits on the sale of land); *Smith Barry v. Cordy* [1946] 2 All E.R. 396 (accretions to capital invested in purchase of endowment policies at public sales); *Griffiths v. J. P. Harrison (Watford)* [1963] A.C. 1 (a transaction involving the shares of another company was an “adventure”).

(f) “Trade” (Income Tax Act 1952 (c. 10), s.341, now Income and Corporation Taxes Act 1970 (c. 10), s.168). Buying and selling shares with the express purpose of creating a profit against which to offset a trading loss can be a trading operation for the purposes of this section (*Griffiths v. Harrison (J. P.) (Watford)* [1963] A.C. 1). Whether a particular dividend stripping transaction was a “trading” transaction within this section depended on whether the shares were acquired as stock-in-trade for the purpose of being dealt in, or merely for the purpose of tax avoidance (*Thomson v. Gurneville Securities* [1972] A.C. 661).

(g) “Trade” (Income Tax Act 1952 (c. 10), ss.122, 123, 137, 526; Income and Corporation Taxes Act 1970 (c. 10), ss.108, 109, 168, 526). It was held (reversing the decision of the Court of Appeal, see main work para. (10)) that a person does not carry on a “trade” when he merely requests, procures or persuades other persons into taking steps whereby a profit accrues to one or more of such other persons (*Ransom v. Higgs* [1974] 1 W.L.R. 1594). A person who inherits or buys property without, at the time, having any intention of selling it, and who is not in the business of buying and selling land had not engaged in an “adventure in the nature of trade” merely because, having decided to sell the property, he took steps to enhance its value before doing so (*Taylor v. Good* [1974] 1 W.L.R. 556). Stocks

and shares were held not to be things which can be dealt in by way of "trade" within the meaning of s.168(1) of the Income and Corporation Taxes Act 1970 (c. 10) (*Salt v. Chamberlain* [1979] T.R. 203). But in *Cooper v. C. & J. Clark* ([1982] S.T.C. 335) it was held that a series of purchases and sales of gilt edged securities, made by a shoe manufacturer with a cash surplus, could amount to a "trade." A company which acquired properties, found licensees to occupy them, granted licences and generally managed the properties was not engaged in "trade" for corporation tax purposes (*Webb v. Coneise Properties* [1982] S.T.C. 913). Running a business which involved nothing more than maintaining and letting two seaside villas for holiday purposes was not a "trade" (*Gittos v. Barclay* [1982] S.T.C. 390).

(8) "Trade or dealing for gain or profit," forbidden to a "spiritual person" (s.3 (57 Geo. 3, c. 99); see now s.29, Pluralities Act 1838 (c. 106)), includes the business of a banker (*Hall v. Franklin* 7 L.J. Ex. 110). The curious practical decision in that case was remedied by s.1, Validity of Contracts Act 1837 (c. 10); see also s.1, Trading Partnerships Act 1840 (c. 14).

(9) "Trade," in Trade Boards Acts 1909 to 1918, was not confined to operations of buying and selling, but denoted any branch of work in which persons were employed commercially, provided that the employment was not casual or by a private person: see *Skinner v. Breach Ltd.* 96 L.J.K.B. 834.

(10) The business of presenting histrionic performances to the public for profit was held to be a trade or industry within the meaning of Trade Disputes Act 1906 (c. 47): see *Brimelow v. Casson* [1924] 1 Ch. 302.

(11) "Special circumstances in the trade" (Trade Marks Act 1938 (c. 22), s.26(3)): "the trade" here refers to the trade in which the proprietor of the mark is engaged (*Aktiebolaget Manus v. R. J. Fullwood and Bland* [1949] Ch. 208).

(12) The business of a jobbing builder was held to be a trade within a covenant not to use premises for the purposes of trade (*Westripp v. Baldock* [1939] 1 All E.R. 279).

(13) "Trade, profession or employment" (Landlord and Tenant Act 1954 (c. 56), s.23(2)). The holding of a Sunday school (free of charge) does not amount to a trade, profession or employment within the meaning of this section (*Abernethie v. Kleiman (A. M. & J.)* [1970] 1 Q.B. 10). Taking in lodgers and making virtually no profit by so doing was held not to be a "trade, profession or employment" within the meaning of this section (*Lewis v. Weldcrest* [1978] 1 W.L.R. 1107).

(14) Premises where "manual labour is exercised by way of trade, or for purposes of gain," in definition of workshop (s.149(1)(c), Factory and Workshop Act 1901 (c. 22)), did not include that part of a farm wherein operations—e.g. thrashing, chaff-cutting, corn-grinding, etc.—were carried on as part of the economy of the farm (such as feeding the cattle of the farmer), for that was clearly not "by way of trade," nor was it "for purposes of gain," for "gain" in such a connection meant direct gain, by the manufacture of something (*Nash v. Hollinshead* [1901] 1 K.B. 700). "By way of trade" did not cover a company in the nature of an automobile club (*Automobile Proprietary v. Brown* [1955] 1 W.L.R. 573).

(15) The exemption from license duty for vehicles used "in the course of trade or husbandry," given by s.19(6), Revenue Act 1869 (c. 14), did not extend to vehicles belonging to a circus proprietor and used by him for carrying his performers and making displays (*Speak v. Powell* L.R. 9 Ex. 25). Cp. CARRIAGE; VEHICLE.

(16) Every weighing instrument was "used for trade," within s.1(1), Weights and Measures Act 1889 (c. 21), which was employed in relation to a contract for sale of goods, e.g. a weighing machine at smelting works (*Crick v. Theobald* 64 L.J.M.C. 216).

(17) "Trade in or sell any article composed wholly or in part of gold or silver" (s.1, Revenue Act 1867 (c. 90)): see *per* Collins J., *Killick v. Graham* [1896] 2 Q.B. 196. "Trade in or sell" plate: see *Scott v. Solomon* [1905] 1 K.B. 577, cited PLATE.

"Trade or commerce": see CIVIL RIGHTS.

Loss "connected with" a trade or business: see CONNECTED WITH.

"Succeed to any trade, etc.": see SUCCEED.

"Trade" carried on by a married woman: see SEPARATELY; CARRY ON.

Stat. Def., Finance Act 1965 (c. 25), s.89(1); Taxes Management Act 1970 (c. 9), s.118; Income and Corporation Taxes Act 1970 (c. 10), ss.238(4), 526; Capital Gains Tax 1979 (c. 14), s.121(2); Protection of Trading Interests Act 1980 (c. 11), s.1; Finance Act 1980 (c. 48), Sched. 18, para. 23; Finance Act 1982 (c. 39), Sched. 9, para. 16.

See BUSINESS; HABITUAL; LAWFUL TRADE; OFFENSIVE; PUBLIC TRADE OR BUSINESS; TRADER; TRADING; USAGE OF TRADE; USE; RESTRAINT OF TRADE; TRADES-PEOPLE; TRADE OR BUSINESS; IN HIS TRADE OR BUSINESS; BUSINESS; CALLING; WHOLLY.

TRADE DEBTS. (1) "Trade debts," on which a bankruptcy petition is founded is not confined to those incurred in buying or selling, it includes other obligations imposed on a debtor by his trading, *e.g.* excess profits tax (*Theophile v. Solicitor-General* [1950] A.C. 186).

(2) See *Tailby v. Official Receiver* 13 App. Ca. 523, cited ALL; *Hadley v. Hadley* [1898] 2 Ch. 680, cited PAYMENT.

"My trade debts": see STOCK-IN-TRADE.

TRADE DESCRIPTION. (1) As "applied" within the meaning of s.5(1)(d) of the Merchandise Marks Act 1887 (c. 28) "trade description" was not limited to a description used in an actual physical connection with goods; therefore, falsely to invoice a "barrel" of beer which was not a barrel, was an offence within this latter section (*Budd v. Lucas* [1891] 1 Q.B. 408); so, to falsely say of a ham that it was Scotch (*Coppen v. Moore* [1898] 2 Q.B. 306). But see *Langley v. Bombay Tea Co.* [1900] 2 Q.B. 460. See further *Star Tea Co. v. Whitworth* 20 T.L.R. 539. See further *Cameron v. Wiggins* [1901] 1 K.B. 1; *Evans v. British Doughnut Co. Ltd.* [1944] K.B. 102.

(2) The mileage shown on the odometer of a car offered for sale is a "trade description" within the meaning of the Trade Descriptions Act 1968 (c. 29), s. 1(1)(b) (*Simmons v. Potter* [1975] R.T.R. 347; *Taylor v. Smith* [1974] R.T.R. 190; *Lewis v. Mahoney* [1977] Crim. L.R. 436).

(3) The words "extra value" on the wrapper of a chocolate bar do not amount to a "trade description" within the meaning of the Trade Descriptions Act 1968 (c. 29), s.2(1) (*Cadbury v. Halliday* [1975] 1 W.L.R. 649).

Stat. Def., Merchandise Marks Act 1953 (c. 48), s.1.

See also FALSE TRADE DESCRIPTION.

TRADE DISPUTE. (1) "A trade dispute between employers and workmen" (s.3, Conspiracy and Production of Property Act 1875 (c. 86)), *semble*, meant a dispute about, or relating to, the employment between an employer and his own workmen; it did not include a case where the officers of a trade union created strife by calling out members of their union working for an employer with whom none of them had any dispute (*Quinn v. Leathem* [1901] A.C. 495).

(2) As to what constituted a trade dispute within the meaning of the Trade Dis-

putes Act 1906 (c. 47), see *Fowler v. Kibble* 91 L.J. Ch. 353; *Conway v. Wade* [1909] A.C. 506; *Hodges v. Webb* [1920] 2 Ch. 70; *White v. Riley* [1921] 1 Ch. 1, cited COERCION; see also *Larkin v. Long* [1915] A.C. 814; *Pratt v. British Medical Association* [1919] 1 K.B. 244; *Dallimore v. Williams* 29 T.L.R. 67.

(3) A dispute between a union member and the union district committee, arising out of the member's refusal to strike when illegally adhered to do so, was held not to be a "trade dispute" within the meaning of s.5(3) of the Trade Disputes Act 1906 (c. 47) (*Huntley v. Thornton* [1957] 1 W.L.R. 321). Picketing and other industrial acts directed against a company which employs no members of the union concerned are not in furtherance of a "trade dispute" within the meaning of this section (*Torquay Hotel Co. v. Cousins* [1969] Ch. 106). A strike held in protest against some legislation proposed by the Government is not in furtherance of "trade dispute" (*Associated Newspapers Group v. Flynn* (1970) 10 K.I.R. 17).

(4) (Conditions of Employment and National Arbitration Order 1940 (1940, No. 1305), and Industrial Courts Act 1919 (c. 69).) See *National Association of Local Government Officers v. Bolton Corporation* [1943] A.C. 166 (dispute as to conditions of service of officers of municipal corporation a "trade dispute"); *R. v. National Arbitration Tribunal, Ex p. Keable Press* [1943] 2 All E.R. 633 (dispute between employers and trade union a "trade dispute"); *R. v. National Arbitration Tribunal, Ex p. Horatio Crowther & Co.* [1948] 1 K.B. 424 (jurisdiction of National Arbitration Tribunal); *R. v. National Arbitration Tribunal, Ex p. Midgley Harmer* [1947] L.J.R. 645 (dispute between employers and workmen over wages which were above rate agreed a "trade dispute"); *Re Birkenhead Corporation* [1952] Ch. 359 (corporation's dispute with a teacher over augmentation of war service pay was a "trade dispute"); *R. v. National Arbitration Tribunal, ex p. South Shields Corporation* [1952] 1 K.B. 46 (a dispute between a corporation and its town clerk was not a "dispute" within Industrial Disputes Order 1951 (S.I. No. 1376), art. 12(1)).

(5) An act done in contemplation of a trade dispute means an act done before the dispute arises; an act in furtherance means an act done when the dispute has come into existence (*Conway v. Wade* [1909] A.C. 506, 512, 522; *R. v. Tearse* 171 L.T. 287).

(6) A dispute between workers in their capacity as workers and an employer about employment matters was an "industrial dispute" under the Industrial Relations Act 1971 (c. 72), even if the employer was not in contractual relations with the workers (*Midland Cold Storage v. Turner* [1972] I.C.R. 230). A strike called for political reasons could arguably be in furtherance of an "industrial dispute" within the meaning of this Act, where some of the members of the union calling the strike were employed by the government in protest against the policies of which the strike was directed (*Sherard v. A.U.E.W.* [1973] I.C.R. 421). A dispute between workmen and workmen was not an "industrial dispute" within the Industrial Relations Act 1971 (c. 72), and where workers refused to work with a non-union employee the employees had a remedy in tort (*Cory Lighterage v. T.G.W.U.* [1973] I.C.R. 339).

(7) Where a dispute concerns terms and conditions of employment it falls within the definition of "trade dispute" in s.29(1) of the Trade Union and Labour Relations Act 1974 (c. 52) as amended by the Employment Act 1982 (c. 46), s.18, even though it is being pursued for other motives which are predominant and extraneous; in this case the campaign of the International Transport Workers Federation against ships sailing under flags of convenience (*N.W.L. v. Woods*; *N.W.L. v. Nelson* [1979] 1 W.L.R. 1294, distinguishing *The "Camilla M"* [1979] 1 Lloyd's Rep. 26). But coercive action which is not connected with the terms and conditions of

employment (in this case the threat to stop a broadcast to South Africa) is not a "trade dispute" (*British Broadcasting Corporation v. Hearn* [1977] 1 W.L.R. 1004). Where the union instructed its members not to carry out certain instructions issued by British Telecom there was no "trade dispute" within the meaning of this section since the union's primary dispute was with the government and the plaintiff over the policy of liberalising the telecommunications system (*Mercury Communications v. Scott-Garner and Another* [1984] 1 All E.R. 179).

Stat. Def., Trade Union and Labour Relations Act 1974 (c. 52), s.29; Social Security Act 1975 (c. 14), s.19.

See hereon BESET; BOYCOTT; CONNECTED WITH; INDUSTRIAL EMPLOYMENT; INTERFERE; RAT. See also CONTEMPLATION; FURTHERANCE; ORGANISATION SECONDARY.

TRADE EXPENSE. (1) "The principle which is to be deduced from the cases is that where a sum of money is laid out for the acquisition or improvement of a fixed capital asset it is attributable to capital, but if no alteration is made in the fixed capital asset by the payment, then it is properly attributable to revenue, being in substance a matter of maintenance, the maintenance of the capital structure or the capital assets of the company" (*per* Lawrence J., *Southern v. Borax Consolidated Ltd.* [1941] 1 K.B. 111, 116). See *Rhodesia Railways v. Income Tax Collector, Bechuanaland* [1933] A.C. 368, where the distinction is drawn between cost of relaying a railway line so as to restore it to its original condition (income expense), and of relaying it so as to improve it (capital expense).

(2) A sum paid as monopoly value on the grant of a licence was held to be a capital payment (*Kneeshaw v. Abertolli* [1940] 2 K.B. 295; *Henriksen v. Grafton Hotel Ltd.* [1942] 2 K.B. 184).

See WHOLLY.

TRADE MARK. (1) "The essence of a trade mark is that it is some distinctive thing which points out that the goods are the goods of A B" (*per* Kay J., *Richards v. Butcher* [1891] 2 Ch. 536; see further *Re Hopkinson* [1892] 2 Ch. 116; *Standard Ideal Co. v. Standard Sanitary Manufacturing Co.* [1911] A.C. 78, cited STANDARD; *McDowell v. Standard Oil Co.* 96 L.J. Ch. 386). Cp. TRADE DESCRIPTION.

(2) "A trade mark has no independent existence; there is no such thing as a trade mark in gross; it does not exist as property except in conjunction with and as an accessory to a business, and then only because it connotes the manufacture or skill of some person or persons; the imitation of a trade mark consists not in taking the actual mark, but in so taking and using it as to injure a business by representing that the goods of the plaintiff are the goods of the defendant" (*per* Farwell L.J., in *Mansell v. Valley Printing Co.* [1908] 2 Ch. 448).

(3) As to when a word (other than a "fancy" or "invented" word—see FANCY WORD) may be a trade mark, or part of a trade mark, see *Raggett v. Findlater* L.R. 17 Eq. 29; on which case see *Reinhardt v. Spalding* 49 L.J. Ch. 57; *Re Clement* [1900] 1 Ch. 114.

(4) (Trade Marks Act 1905 (c. 15), ss.3, 9.) Under s.9 of the Act, a surname may be a registrable trade mark if it is an uncommon name and its user has been so extensive that it has become distinctive for the goods in respect of which it is to be registered: see *Re Teofani & Co.'s Trade Mark* [1913] 2 Ch. 545, applied in *Re Crawford's Application* [1917] 1 Ch. 550. See now Trade Marks Act 1938 (c. 22), ss.9, 68. The widened language of the Act of 1938 does not make a radical alteration in the law relating to trade marks (*Aristoc Ltd. v. Rysta Ltd.* [1945] A.C. 68). See further REGISTERED; REGISTRABLE; *Re Crompton* [1902] 1 Ch. 758, distinguish-

ing *Re Player* [1901] 1 Ch. 382, and applying *Robinson v. Finlay* 9 Ch. D. 587, and *Re Spencer* 3 Pat. Ca. 73; *Registrar of Trade Marks v. Du Cros* [1913] A.C. 624.

(5) Putting the words “trade mark” on a part of a trade mark label, without more, was not something calculated to deceive within s.73, Patents, etc., Act 1883 (c. 57) (*Re Bass* [1902] 2 Ch. 579). Cp. PATENT. See now Trade Marks Act 1938 (c. 22), s.11.

(6) A foreign trade mark, for which no application for registration had been made under s.91 of the Patents and Designs Act 1907 (c. 29), was not a “trade mark” within the meaning of s.3(1) of the Merchandise Marks Act 1887 (c. 28) (*Re Vitamins’ Application* (No. 2) [1956] 1 W.L.R. 1).

(7) “Mark” (Trade Marks Act 1938 (c. 22), s.68). The appellants sought to register as a trade mark medicinal capsules sold by them, the “mark” being the colour of the transparent capsules and the pellets contained therein. It was held by the House of Lords that such a colour scheme covering the whole surface of the goods in question is capable of amounting to a trade mark, and is registrable as such if the other conditions are satisfied (*Smith Kline & French Laboratories v. Sterling-Winthrop Group* [1975] 1 W.L.R. 914).

(8) The bottle used as a container for Coca-Cola, which was an unusual shape, was held not to be a trade mark within the meaning of the Trade Marks Act 1938 (c. 22) as the mark must be something distinct from the container (*In re Coca-Cola Company’s Application* [1985] F.S.R. 315).

Stat. Def., Hop (Prevention of Frauds) Act 1886 (c. 37), s.1; Trade Marks Act 1938 (c. 22), s.68; Merchandise Marks Act 1926 (c. 53), s.1; Customs and Excise Act 1952 (c. 44), Sched. 6, para. 4.

See also ADD; CALCULATED TO DECEIVE; DISTINCTIVE; ESSENTIAL; FANCY WORD; FRANCHISE; INDIVIDUAL; NAME; PUBLIC USE; REGISTERED; SPECIAL; WORD; Cp. TRADE NAME.

TRADE NAME. (1) A trade name may be, and often is, a trade mark, but it has a wider application than that. In its wider sense, it means the name under which a person (or company) carries on, and has habitually carried on, his business, and by which he is known in the trade or business to which his business belongs, and which accordingly distinguishes the nature, quality, and fame of his goods and dealings. “It should never be forgotten that the sole right to restrain anybody from using any name he likes in the course of any business he chooses to carry on, is a right ‘in the nature of’ a trade mark, *i.e.* a man has a right to say—‘you must not use a name, whether fictitious or real—you must not use a description, whether true or not—which is intended to represent, or calculated to represent, to the world that your business is my business, and so by a fraudulent mis-statement deprive me of the profits of the business which would otherwise come to me.’ . . . An individual plaintiff can only proceed on the ground that, having established a business reputation under a particular name, he has a right to restrain anyone else from injuring his business by using that name” (*per James L.J., Levy v. Walker* 10 Ch. D. 447, 448). See hereon *Burgess v. Burgess* 22 L.J. Ch. 675; *Turton v. Turton* 42 Ch. D. 128; *Jamieson v. Jamieson* 42 S.J. 197; *Pinet v. Pinet* [1898] 1 Ch. 179; *Montgomery v. Thompson* [1891] A.C. 217; *Birmingham Vinegar Co. v. Powell* [1897] A.C. 710; *Saxlehner v. Appollinaris Co.* [1897] 1 Ch. 893; *Parsons v. Gillespie* [1898] A.C. 239; *Cash v. Cash* 84 L.T. 349; 86 *ibid.* 211; *Grand Hotel Co. of Caledonia Springs v. Wilson* [1904] A.C. 103, distinguishing *Montgomery v. Thompson* (sup.); *Wotherspoon v. Currie* L.R. 5 H.L. 508, and citing *Johnston v. Orr Ewing* 7 App. Ca. 219, as an example of a case which (whilst it would not mislead a dealer) was an

infringement of a trade name or mark, because it was calculated to mislead a retail purchaser. The form of the injunction in this last case (as approved by House of Lords) was adopted by House of Lords in *Reddaway v. Banham* [1896] A.C. 199, which last case was distinguished in *Cellular Clothing Co. v. Maxton* [1899] A.C. 326; *Warwick Tyre Co. v. New Motor Co.* [1910] 1 Ch. 248; *Ash v. Invicta Manufacturing Co.* 55 S.J. 348; *Elliott v. Expansion of Trade Ltd.* 54 S.J. 101; *Dorman & Co. v. Meadows Ltd.* [1922] 2 Ch. 332.

(2) "Patent or other trade name," in proviso to s.14, Sale of Goods Act 1893 (c. 71). What is within this phrase is a question of fact in each case; it is confined to articles which have in fact a name by which they are known and dealt in, and under which they can be (or rather usually are) ordered: see *Bristol Tramways Co. v. Fiat Motors* [1910] 2 K.B. 381, cited MAKE KNOWN.

(3) As to restraining the registration of a company taking a name similar to that of an existing company, see *Hendriks v. Montagu* 17 Ch. D. 638; *Tussaud v. Tussaud* 44 Ch. D. 678.

See passing off, under PASSING. See also Registration of Business Names Act 1916 (c. 58).

See also USUAL TRADE NAME.

TRADE OR BUSINESS. (1) Habitual speculation on the Stock Exchange held to be a trade or business within s.125 of the Bankruptcy Act 1914 (c. 59) (*Re A Debtor* [1936] Ch. 237). See also *Re A Debtor* [1927] 1 Ch. 97.

(2) A company "established for any trade or business" (s.11(5), Customs and Inland Revenue Act 1885 (c. 51)) could have been one not anticipating profit (*Re Law Reporting Council* 22 Q.B.D. 279); *secus* of the same phrase in s.13(2), Act of 1878 (c. 15), because there was added "by which the occupier seeks a LIVELIHOOD or profit" (*London Library v. Carter* 6 T.L.R. 161; *British Institute of Preventive Medicine v. Styles* 11 T.L.R. 432; see hereon *Scotland Free Church v. Bain* 24 Rettie, 492, cited Hall). See further SOLELY.

(3) A fire station belonging to a town council was not within the exemption in Sched. B, House Tax Act 1808 (c. 55) (as modified by s.13(2), Customs and Inland Revenue Act 1878 (c. 15), for the council did not "seek a livelihood or profit" thereby (*Edinburgh Magistrates v. Inland Revenue Commissioners* 40 Sc. L.R. 632). Cp. DWELLING-HOUSE.

(4) A casual labourer employed by a farmer to thatch the roof of his farm house was held to be "employed for the purposes of the employer's trade or business" within the meaning of s.3, Workmen's Compensation Act 1925 (c. 84), and to be a workman within the meaning of the section: see *Manton v. Cantwell* [1920] A.C. 781. See also EMPLOYED.

(5) "Trade or business" carried on for which licence required (s.3, Revenue Act 1867 (c. 90)): see *per* Collins J., *Killick v. Graham* [1896] 2 Q.B. 196.

(6) An agreement, in restraint of trade, not to carry on "any trade or business," means trade or business of a kind and manner of operation similar to that of the contractee (*Moenich v. Fenestre* 61 L.J. Ch. 737). See further PREVIOUSLY.

(7) A solicitor's practice was not a "trade or business" within ss.4(1) and 71(1) of the Landlord and Tenant Act 1927 (c. 36) (*Stuchbery & Son v. General Accident, Fire and Life Assurance Corporation* [1949] 2 K.B. 256).

(8) A commercial traveller was held, on the facts, to be carrying on a trade or business (*Marsh v. Inland Revenue Commissioners* [1943] 1 All E.R. 199).

(9) "Trade or business" (ss.38 and 39, Finance (No. 2) Act 1915 (c. 89)): see

Robbins v. Inland Revenue Commissioners 35 T.L.R. 601, where it was held that being a whole-time servant was not carrying on a trade or business under the section so as to render the person subject to excess profits duty. See also *Martin v. Inland Revenue Commissioners* [1927] A.C. 312; *Binney v. Inland Revenue Commissioners* [1920] 3 K.B. 348; *Cape Brandy Syndicate v. Inland Revenue Commissioners* 90 L.J.K.B. 461; *Korean Syndicate Ltd. v. Inland Revenue Commissioners* [1921] 3 K.B. 258; *Lake v. Cronin* [1929] 1 K.B. 31. "Trade or business" for profits tax purposes: see *I.R.C. v. Butterley & Co.* [1957] A.C. 32; [1956] 2 W.L.R. 1101; [1956] 2 All E.R. 197.

(10) S.53, Finance Act 1920 (c. 118): see *Inland Revenue Commissioners v. Cornish Mutual Insurance Co.* 42 T.L.R. 255. See further CARRY ON.

(11) Profits of "trade or business" (Finance (No. 2) Act 1939 (c. 109), s.12) covered royalties received as the result of a grant of a licence to manufacture under a patent (*Inland Revenue Commissioners v. Desoutter Bros. Ltd.* [1946] 1 All E.R. 38).

(12) "Trade or business" (for purposes of water supply): see *Manchester Corporation v. Buttle* [1929] 2 Ch. 390.

(13) "Trade or business carried on for the purposes of gain," within Sched. I, Pt. II(b), Unemployment Insurance Act 1920 (c. 30). A club, a public school, and private school were held not to be included in the section, and their servants accordingly not required to be insured: see *Re Junior Carlton Club* [1922] 1 K.B. 166, cited DOMESTIC SERVANT. Farm workers employed by a landowner on his estate, one as carter to haul timber, and two as hedgers and ditchers, held not to be insurable: see *Re Fuller* 19 L.G.R. 756; see further *Re Vellacott* [1922] 1 K.B. 466, cited DOMESTIC SERVANT; *Re Dr. David* [1922] 1 K.B. 172; *Re North and Ingram's Application* [1922] 1 K.B. 188.

(14) "Trade or business or an undertaking" (Contracts of Employment Act 1963 (c. 49), Sched. 1, para. 10(2)). A company which sold its factory, plant and machinery (but not the name or goodwill) to another, and moved to set up again elsewhere, was held to have "transferred" its "business" within the meaning of this paragraph (*Woodhouse v. Brotherhood* [1972] 1 W.L.R. 401).

(15) "Trade or business" (Agricultural Holdings Act 1948, s.1(2)) is not limited to any specific agricultural trade or business but may include, for instance, where a field is used for grazing, and is therefore agricultural land within s.94(1) of the Act, and is so used for the purposes of a riding school, the said riding school is a trade or business within the Act (*Rutherford v. Maurer* [1962] 1 Q.B. 16; [1961] 3 W.L.R. 5; [1961] 2 All E.R. 775).

(16) "Trade or business" (Town and Country Planning (Use Classes) Order 1950 (No. 1131) art. 2(2), Town and Country Planning (Use Classes) Order 1963 (No. 708) as amended by Town and Country Planning (Use Classes) (Amendment) Order 1965 (No. 229) can include the cooking of school meals by a local authority (*Rael Brook v. Minister of Housing and Local Government* [1967] 2 Q.B. 65).

(17) "Trade or business" (Town and Country Planning (Use Classes) Order 1972 (No. 1385)). The making of articles by an artist expressing his art form should not be regarded as a process carried on in the course of "trade or business" even though those articles are sometimes sold (*Tessier v. Secretary of State for the Environment* (1975) 31 P. & C.R. 161).

(18) The Home Office Supplies and Transport branch does not carry on a "trade or business" within s.1 of the Criminal Evidence Act 1965 (c. 20) (*R. v. Gwilliam* [1968] 1 W.L.R. 1839). A National Health Service hospital is not a "business" for the purposes of this section and, therefore, records kept by such a hospital are not

admissible in evidence in criminal proceedings under the conditions specified by the Act (*R. v. Crayden* [1978] 1 W.L.R. 604).

(19) "In connection with any trade or business" (Transport Act 1968 (c. 73), s.60(1)(b)). A converted coach used for transporting a stock-car for racing, from which no profit was made, was not being used "in connection with any trade or business," notwithstanding that the competition involved sponsorship and prize money (*Stirk v. McKenna* [1984] R.T.R. 330).

(20) "Trade or business" (Trade Descriptions Act 1968 (c. 29), s.1). A full-time postman who carried out repairs and improvements to vehicles in his spare time, and then sold them by placing advertisements in newspapers, was not doing so "in the course of a trade or business" within the meaning of this section (*Blakemore v. Bellamy* [1983] R.T.R. 303). Where a supplier of goods sells goods that are not his usual stock-in-trade he nevertheless does so as part of a trade or business within the meaning of this section (*Corfield v. Sevenways Garage* (1984) 148 J.P. 684). A person who sold his car showing an inaccurate mileage figure on the odometer did not do so "in the course of a trade or business" within the meaning of this section, notwithstanding that he had used the car almost exclusively for his business (*Davies v. Sumner* [1984] 1 W.L.R. 1301). See also BUSINESS; TRADE.

"If a trade or business . . . is transferred" (Contracts of Employment Act 1963 (c. 49), Sched. 1, para. 10(2)), see TRANSFER.

TRADE OR FINANCE PURCHASER. A part-time motor dealer is still a "trade or finance purchaser" within the meaning of the Hire Purchase Act 1964 (c. 53), s.29(2) even where he acquires a vehicle in his private capacity for his own use (*Stevenson v. Beverley Bentinck* [1976] 1 W.L.R. 483).

TRADE PROCESS. Burning debris on a demolition site is a "trade process" within the meaning of s.1 of the Clean Air Act 1968 (c. 62) (*Sheffield City Council v. A.D.H. Demolition* (1983) 82 L.G.R. 177).

TRADE PURPOSES. "For the purposes of trade": see PURPOSES. See DOMESTIC PURPOSES.

TRADE REFUSE. Refuse collected by the local authority from refuse bins placed by the owners of a family holiday centre for use by the temporary occupiers of chalets, caravan and camping sites, although consisting of items normally to be found in domestic refuse bins, was held to be "trade refuse" within the meaning of s.73 of the Public Health Act 1936 (c. 49) on the grounds that the holiday centre comprised one entity, and the refuse was the result of carrying on a trade or business there (*Pentewan Sands v. Restormel Borough Council* (1980) 78 L.G.R. 642). See REFUSE.

TRADE REGULATION. See REGULATE.

TRADE UNION. (1) The funds of a trade union cannot be employed in the election or payment of Members of Parliament: see *Amalgamated Society of Railway Servants v. Osborne* [1910] A.C. 87; or of municipal or other local authorities not including boards of guardians: see *Wilson v. Amalgamated Society of Engineers* 80 L.J. Ch. 469; *Cotter v. N.U.S.* [1929] 2 Ch. 58.

(2) "The qualification contained in the proviso to s.23 of the Trade Union Act 1871 (c. 31) still remains part of the definition of a trade union; the whole of s.16 of the Act of 1876 forms part of the definition in spite of the fact that part only of its

provisions are repeated in the Trade Union Act 1913 (c. 30). The definition must be treated as qualified by the provisions of s.1(1), and by the provisions contained in s.2(1) of the Act of 1913" (*per* Bankes L.J., in *Performing Right Society v. London Theatre of Varieties* [1922] 2 K.B. 433, affirmed [1924] A.C. 1).

(3) A union of co-operative trading Societies was not a trade union within the meaning of the Trade Union Act 1871 to 1913 (*Birtley & Dist. Co-op. Soc. v. Windy Nook & Dist. Co-op. Soc.* [1960] 1 Q.B. 1).

(4) S.4(1), Trades Disputes Act 1906 (c. 47), applies to trade unions generally, and is not limited or restricted in its application to trade unions of "workmen or masters," so as to exclude a trade union . . . whose object is "the imposing of restrictive conditions on the conduct of any trade or business" which was a "statutory object" under s.1(2), Trade Union Act 1913, *sup.*, and such a trade union, equally with trade unions of workmen or masters, is entitled to the immunity from actions of tort given by the section: *Hardie & Lane Ltd. v. Chilton* [1928] 1 K.B. 663, applying *Vacher & Sons Ltd. v. London Society of Compositors* [1913] A.C. 107.

(5) A friendly society which is also a trade union is a valid friendly society in respect of such of its objects as are friendly society objects, though not so as regards other objects which are in restraint of trade (*Swaine v. Wilson* 24 Q.B.D. 252; but see *Old v. Robson* 59 L.J.M.C. 41). *Swaine v. Wilson*, and *Old v. Robson*, were considered in *Burke v. Amalgamated Society of Dyers* [1906] 2 K.B. 583. See further *Gosney v. Bristol, etc., Trade & Provident Society* [1909] 1 K.B. 901.

(6) As to ordinary trade unions and also as to trade associations of employers, see *Rigby v. Connol* 14 Ch. D. 482; *Chamberlain Co. v. Smith* [1900] 2 Ch. 605; *Taff Vale Railway v. Amalgamated Society of Railway Servants* [1901] A.C. 426; see further *Quinn v. Leathem* [1901] A.C. 495; *Read v. Friendly Society of Operative Stonemasons* [1902] 2 K.B. 732; *Giblan v. National Amalgamated Labourers' Union* [1903] 2 K.B. 600; *Yorkshire Miners' Association v. Howden* [1905] A.C. 256; *South Wales Miners' Federation v. Glamorgan Coal Co.* [1905] A.C. 239; *Denaby Collieries v. Yorkshire Miners' Association* [1906] A.C. 384; *Russell v. Amalgamated Society of Carpenters* [1910] 1 K.B. 506.

(7) A trade union, though not an incorporated body, is capable of entering into contracts and is liable for breach of contract with its members (*Bonsor v. Musicians' Union* [1956] A.C. 104).

Stat. Def., Trade Union Act 1913 (c. 30), ss.1, 2; Factories Act 1961 (c. 34), s.117(7); Trade Union and Labour Relations Act 1974 (c. 52), s.28.

"Provident benefits" of a trade union: see PROVIDENT.

See BESET; BOYCOTT; INTIMIDATE; THREAT; TRADE.

TRADER. (1) "Traders," under the Bankruptcy Laws, were broadly stated as "such as live by buying and selling" (s.1, 1 Jac. 1, c. 15). That broad definition was amplified and made more precise by subsequent legislation; and for an enumeration of persons who formerly were liable to be adjudicated bankrupt as "traders," see Sched. 1, Bankruptcy Act 1869 (c. 71).

(2) Though an auctioneer was included in "traders" in Sched. I, Bankruptcy Act 1869 (c. 71), a firm of auctioneers was not a trading partnership so that one member could bind the others by accepting a bill of exchange in the name of the firm (*Wheatley v. Smithers* [1906] 2 K.B. 321); this case was reversed on another ground, but every member of the Court of Appeal was careful to say that he expressed no opinion as to whether the point for which the above case was cited had been well decided or not ([1907] 2 K.B. 684).

(3) "Trader" (s.5, Bovill's Act 1865 (c. 86)) included a trading joint stock company (*Re House Improvement & Supply Association*, *The Times*, January 29, 1890).

(4) Railway and Canal Traffic Act 1888 (c. 25), s.55, "trader includes any person sending, receiving, or desiring to send merchandise by railway or canal"; and might in a proper case include a carrier (*Master Lightermen & Barge Owners' Association v. Southern Railway* (No. 2) 21 Ry. & Can. Tr. Cas. 126, 155).

(5) "Trader" (Railways Act 1921 (c. 55), Sched. V) "includes any person sending or receiving or desiring to send or receive merchandise by railway" (*Port of Manchester Warehouses v. Cheshire* 17 Ry. & Can. Traff. Cas. 95).

(6) "Traders," under s.5(4), Rates and Charges Order 1892, North British Railway Co., see *North British Railway Co. v. Clyde Shipping Co.* 16 Ry. & Can. Traff. Cas. 251.

(7) In *Tenant v. Swansea Harbour Trustees* (3 T.L.R. 129), "traders" of a person were held to mean all persons having dealings with him, *i.e.* his customers.

"Being a trader"; see BEING.

Stat. Def., Transport Act 1953 (c. 13), s.21(7); Capital Allowances Act 1968 (c. 3), Sched. 6, para. 2; Consumer Credit Act 1974 (c. 39), ss.40, 103, 148.

See TRADE; TRADERS; TRADING PERSON; ORDINARY CALLING; CONSTANT TRADER.

TRADESMAN. "The term 'tradesman' (s.1, Sunday Observance Act 1677 (c. 7)) cannot be extended by a reasonable construction to a farmer" (*per* Cockburn C.J., *R. v. Silvester* 33 L.J.M.C. 80), nor to a hairdresser or barber (*Palmer v. Snow* [1900] 1 Q.B. 725), but it includes the proprietor of a shop who supplies for money materials with which customers can show their skill by throwing rings or darts, obtaining prizes if successful, and who maintains a shooting stand where customers are supplied with guns and cartridges for shooting at targets (*Hawkey v. Stirling* [1918] 1 K.B. 63). It includes a person who conducts a lending library (*Lee v. Craven* [1935] 2 K.B. 161); but not, it seems, an estate agent (*Gregory v. Fearn* [1953] 1 W.L.R. 974). Nor does it cover a limited liability company, and a contract made between two such companies on a Sunday was not, therefore, void by virtue of that section (*Rolloswin Investments v. Chromolit Portugal* [1970] 1 W.L.R. 912).

See TRADE; OTHER.

TRADESPEOPLE. See *Baxendale v. North Lambeth Liberal Club* [1902] 2 Ch. 429, cited WAY.

TRADING. (1) "Trading" (s.379(3), Merchant Shipping Act 1854 (c. 104), cp. now Pilotage Act 1913 (c. 31), s.11) means "for the time being trading," or "when trading," and does not mean that a ship must be constantly trading to Brest, etc., in order to obtain the exemption from compulsory pilotage which the section provides (*Courtney v. Cole* 19 Q.B.D. 447; see further *The Wesley Lush*. 268; *The Sutherland* 12 P.D. 154; *The Rutland* [1896] P. 281; [1897] A.C. 333, in which last case Lopes L.J., said, "I take a 'ship trading,' or a 'trading ship,' to be a ship carrying cargo as contradistinguished from a ship not carrying cargo, *e.g.* a yacht or a man-of-war"; *The Columbus* 80 L.T. 203; but see *The Glanystwyth* [1899] P. 118, cited COASTING TRADE). See hereon EUROPE.

(2) There is a "trading between" two ports, A and B, where a vessel loads her cargo elsewhere and brings it to port A, discharging it, or the greater part of it, there, and then, without taking in any fresh cargo at A, proceeds to port B (*per* Collins M.R., *The Cayo Bonito* [1903] P. 218, citing *Courtney v. Cole* and *The Rutland* sup.). A vessel "trading to ports between Boulogne (inclusive) and the Bal-

tic.” within the Order in Council of February 18, 1854, is not confined to a vessel trading within those limits exclusively (*The Cayo Bonito* [1903] P. 203).

(3) “Trading inwards,” “trading outwards”: see *Mersey Docks v. Henderson* 13 App. Ca. 595; *Cross v. Pagliano* L.R. 6 Ex. 9; *Mersey Docks v. Twigge* 67 L.J.Q.B. 604, cited BEYOND SEAS. In *The Hanna* L.R. 1 A. & E. 283, cited PASSENGER, “Dr. Lushington appears to have held that ‘trading to’ meant ‘trading between,’ and applied to outward, as well as inward, voyages” (*per Jeune P., The Columbus sup.*).

(4) “Trading-place”: see *Graham v. Shiels* 8 Sc. L.T. 368, cited DWELLING-HOUSE. See STREET TRADING.

(5) A sub post office carried on with a chemist’s shop on premises is outside a covenant “trading to be restricted to chemistry and druggist’s business and dentist or doctor,” as the office of a sub postmaster is a branch of the public service, in the nature of a monopoly, at a fixed remuneration, and cannot be said to be trading: see *Frampton v. Gillison* [1927] 1 Ch. 196.

(6) “Not trading for profit,” in s.12(2), Acquisition of Land (Assessment of Compensation) Act 1919 (c. 57): see *Metropolitan Water Board v. Berton* [1921] 1 Ch. 299.

See TRADE.

TRADING COMPANY. “Trading and other public companies” (s.5, Apportionment Act 1870 (c. 35)), included any public company, but not a private partnership (*Re Griffith, Carr v. Griffith* 12 Ch. D. 655).

Stat. Def., Finance Act 1978 (c. 42), s.46; Capital Gains Tax Act 1979 (c. 14), s.126; Finance Act 1980 (c. 48), s.37(12), Sched. 18, para. 23; Finance Act 1982 (c. 39), Sched. 9, para. 16; Finance Act 1983 (c. 28), s.24(4); Finance Act 1984 (c. 43), s.91.

See PUBLIC COMPANY.

TRADING ESTABLISHMENT. In an agreement in restraint of trade, “trading establishment” means any business contrary to the intention of the agreement and which would be likely to interfere with the trade acquired under the agreement (*Avery v. Langford* 23 L.J. Ch. 837; Kay, 663).

TRADING GROUP. Stat. Def., Finance Act 1983 (c. 28), s.24(4).

TRADING INCOME. “Trading income” (Finance Act 1965 (c. 25), s.58(7)). Where shipowners set aside sums of money as a depreciation fund to finance the replacement of ships, and invested that money in government securities, it was held that, as the depreciation fund was not actively employed in the company’s trade so as to be at risk in the ordinary course of business, the interest received was not “trading income” within the meaning of this section (*Bank Line v. I.R.C.* [1974] S.T.C. 342).

TRADING LOSS. See Loss.

TRADING PARTNERSHIP. (1) See *Wheatley v. Smithers* [1906] 2 K.B. 321, cited TRANSFER; PARTNERSHIP.

(2) A partnership formed for the purpose of running a cinematograph entertainment is not a trading partnership. Such a partnership is one which involves the purchase and sale of goods: see *Higgins v. Beauchamp* [1914] 3 K.B. 1192.

TRADING PERSON. A person who went from the town in which he resided and took a room at another town, and there sold goods which were brought direct from the town of his residence, was a "trading person going from town to town" within s.6, Hawkers Act 1810 (c. 41) (*Manson v. Hope* 31 L.J.M.C. 191, following *A.-G. v. Tongue* 12 Price, 51; *A.-G. v. Woolhouse*, *ibid.* 65; *Dean v. King* 4 B. & Ald. 517). See further *R. v. Turner* 4 B. & Ald. 510; HAWKER.

TRADING PROFIT. (1) See *Rees Roturbo Development Syndicate v. Inland Revenue Commissioners* [1928] A.C. 132.

(2) (Income Tax Act 1918 (c. 40), Sched. D) may include the results of collecting the debts owing to a partnership in process of being wound up (*Hillerns & Fowler v. Murray* 146 L.T. 474). See now Income and Corporation Taxes Act 1970 (c. 10), s.108.

TRADING RECEIPT. See *Inland Revenue Commissioners v. West* 1950 S.L.T. 337 (sums received for reconditioning vessels after requisition not trading receipts for tax purposes).

TRADING STAMP. Stat. Def., Trading Stamps Act 1964 (c. 71), s.10; Consumer Credit Act 1974 (c. 39), Sched. 3, para. 26(3).

TRADING STOCK. (1) "Trading stock belonging to the trade at the discontinuance" (Income Tax Act 1952 (c. 10), s.143(1); now Income and Corporation Taxes Act 1970 (c. 10), s.137(1)). Once that stock has been identified (in this case two blocks of flats) it matters not whether it is retained for some time or is disposed of immediately after the discontinuance of the trade, or simultaneously with the discontinuance (*Moore v. Mackenzie (R.J.) & Sons* [1972] 1 W.L.R. 359).

(2) For an asset to be acquired as "trading stock" within the meaning of s.274(1) of the Income and Corporation Taxes Act 1970 (c. 10) the purpose of the acquisition must be commercial in character. So that a lease acquired by a company in a group with the object of obtaining group relief for a trading loss under s.258(1), without in fact changing the lease from a capital asset to a trading asset, had not been acquired as "trading stock" within the meaning of this section (*Coates v. Arndale Properties* [1984] 1 W.L.R. 1328). For the same reason the purchase by a company from its parent company of worthless shares in a West German company were not acquired "as trading stock," as there had been no possibility of using them in the course of trade with the purpose of making a profit (*Reed v. Nova Securities* [1985] 1 W.L.R. 133).

(3) Cars obtained by a dealer from the distributor for sale on consignment terms formed part of the dealer's "trading stock" for corporation tax purposes within the meaning of para. 9(1) of Schedule 5 of the Finance Act 1976 (c. 40) (*Fraser v. London Sports Car Centre* [1985] S.T.C. 688). New motor cars purchased from the manufacturer by its own finance company for supply to dealers, as part of a financing package, formed part of that company's trading stock within the meaning of Schedule 5 (*General Motors Acceptance Corporation v. I.R.C.* [1985] S.T.C. 408).

Stat. Def., Income and Corporation Taxes Act 1970 (c. 10), s.137(4); Finance Act 1975 (c. 7), s.18; Finance (No. 2) Act 1975 (c. 45), ss.58, 59, Sched. 10, para. 16; Finance Act 1976 (c. 40), Sched. 5, para. 29(5); Capital Gains Tax Act 1979 (c. 14), s.70(7); Finance Act 1980 (c. 48), Sched. 7, paras. 7, 8; Finance Act 1981 (c. 35), Sched. 9.

TRADING WITH THE ENEMY. (1) A surety for an enemy debtor did not, by paying the creditor in England, “discharge an obligation” of the enemy within s.1(2)(a)(iii) of the Trading with the Enemy Act 1939 (c. 89) (*R. & A. Kohnstamm Ltd. v. Ludwig Krumm (London) Ltd.* [1940] 2 K.B. 359).

(2) The words “for the benefit of an enemy,” in s.1(2) of the Trading with the Enemy Act 1939 (c. 89), were of the widest possible character and were wide enough to sweep in any transaction of which it could be truly said that it was for the benefit of an enemy (*Stockholms Enskilda Bank Akt. v. Schering* [1941] 1 K.B. 424, 436; on appeal, *sub. nom., Schering v. Stockholms Enskilda Bank* [1946] A.C. 219).

TRAFFIC. (1) Railway and Canal Traffic Act 1854 (c. 31), s.2, see *East & West India Dock Co. v. Shaw* 39 Ch. D. 524. See also *per* Cozens-Hardy M.R., in *Metropolitan Water Board v. London, Brighton & South Coast Railway* [1910] 2 K.B. 890, cited DOMESTIC; *Spillers & Bakers v. Great Western Railway* [1911] 1 K.B. 386, cited FACILITIES; Railways Act 1921 (c. 55), ss.47 and 75.

(2) Traffic in s.1(1), Railway and Canal Traffic Act 1913 (c. 29) referred to the class of goods, the particular industry in which the complainant was interested: see *Butterbey Co. v. Midland Railway Co.* [1920] 3 K.B. 86.

(3) In an agreement by one railway company to work a line so “as fairly and efficiently to develop the traffic” of another railway, “traffic” was held to apply to through traffic as well as local traffic (*East London Railway v. London, Brighton & South Coast Railway* 2 Ry. & Can. Traffic Ca. 413).

(4) “Traffic,” in an agreement between a corporation owning a dock and railway companies was held to mean all traffic taken by the corporation from or delivered by the corporation to the railway companies at the dock sidings belonging to the corporation: see *Bristol Corporation v. Great Western Railway Co. and Midland Railway Co.* 81 J.P. 33.

(5) Receipts from all “traffic conveyed on the railway”: “I agree that all things incidental to the traffic are part of the gross receipts, and I think the receipts of the cloak room, and of warehousing, are part of the receipts for carrying the traffic on the line; but I cannot agree that the receipts from telegrams are part of those gross receipts” (*per* Blackburn J., *R. v. Coleridge* 45 L.J.Q.B. 654); and telegram receipts were held not within the phrase, as used in an agreement between two railway companies.

(6) Land to be used only for “convenience” of traffic: see *Harris v. London & South Western Railway* 60 L.T. 392, cited NECESSARY.

(7) A motor, or other light locomotive, may offend against the rule not to go “at any SPEED greater than is reasonable and proper having regard to the traffic on the highway” without its being shown that any particular vehicle or person was actually using the highway at the time (*Smith v. Boon* 84 L.T. 593; see further *Mayhew v. Sutton* 71 L.J.K.B. 46, cited DANGER; *cp. Stinson v. Browning* L.R. 1 C.P. 321, and *Hill v. Somerset* 51 J.P. 742, also cited DANGER). See hereon *Elwes v. Hopkins* [1906] 2 K.B. 1, cited CIRCUMSTANCES.

(8) “Without inconvenience to the traffic” on a railway: see *Lancashire Brick Co. v. Lancashire & Yorkshire Railway* 71 L.J.K.B. 434, cited RAILWAY.

(9) A coal merchant’s office on a railway company’s wharf, used for the clerical work connected with the coal consigned to him by the company, was “used for the purposes of, or in connection with, the traffic” of such company within s.86, London Building Act 1894 (c. ccxiii) (*Elliott v. London County Council* [1899] 2 Q.B. 277). See PURPOSES.

(10) "Traffic sign" (Road Traffic Act 1930 (c. 43), s.48(9), see Road Traffic Regulation Act 1967 (c. 76), s.54) includes a sign directing a driver to stop (*Langley Cartage Co. v. Jenks; Adams v. Jenks* [1937] 2 K.B. 382); but does not include the white lines painted in the centre of roadways (*Evans v. Cross* [1938] 1 K.B. 694).

(11) To "open" a factory or workshop "for traffic on Sunday" (contrary to the condition of the exception as to Jews in s.51, Factories Act 1878 (c. 16)) there had to be something in the nature of trade or commerce; work behind closed doors was not such "traffic," *secus*, if customers came in and went out as they usually did on a weekday; therefore, to send articles to be worked upon, or to fetch them away, in pursuance of "prior" arrangements, was not within the phrase (*Goldstein v. Vaughan* [1897] 1 Q.B. 549).

(12) Where a lease was determinable if the premises should be "required for traffic purposes," it was held that "traffic purposes" connoted more than controlling traffic moving along roads, and could include the use of premises for the purposes of saving time and cost in constructing a road, and the avoidance of congestion elsewhere (*Young v. Greater London Council* (1967) 203 E.G. 851).

(13) "Street for 'carriage' traffic" (s.7, London Building Act 1894 (c. ccxiii)): see *Wood v. London County Council* 64 L.J.M.C. 276.

(14) Street "for 'foot' traffic only" (s.8, Metropolis Management Act 1882 (c. 14)): see *London County Council v. Davis* 64 L.J.M.C. 212.

"Like traffic": see **LOWEST RATE**.

Stat. Def., Railway and Canal Traffic Act 1854 (c. 31), s.1; Regulation of Railways Act 1873 (c. 48), s.3; Highways (Provision of Cattle-grids) Act 1950 (c. 24), s.17; Highways Act 1980 (c. 66), s.329.

See **EXTRAORDINARY TRAFFIC; LOCAL TRAFFIC; PUBLIC TRAFFIC; THROUGH TRAFFIC; TRAFFICKING; FACILITIES; MERCHANDISE TRAFFIC; ARISING; DEVELOP; STATION**.

TRAFFICKING. "Trafficking in a trade mark" (Trade Marks Act 1938 (c. 22), s.28(6)) means dealing in a trade mark primarily as a marketable commodity in its own right and not primarily for the purpose of identifying or promoting merchandise in which the proprietor of the mark is interested (*Re American Greetings Corporation's Application* [1984] 1 W.L.R. 189).

TRAILER. "Trailer" (Road Traffic Acts 1930 (c. 43), s.1; 1960 (c. 16), s.253(1); 1972 (c. 20), s.190(1)). The word should be given its ordinary, and not a strictly technical construction. A four-wheeled vehicle being towed with two wheels off the ground is not a trailer with not more than two wheels (*Carey v. Heath* [1952] 1 K.B. 62); a towed empty poultry shed is a trailer (*Garner v. Burr* [1951] 1 K.B. 31). A van being towed can at the same time be both a "trailer" and a "mechanically propelled vehicle" within the meaning of these sections (*Cobb v. Whorton* [1971] R.T.R. 392).

Stat. Def., Road Traffic Regulation Act 1967 (c. 76), ss.99(1), 104 as amended by the Transport Act 1982 (c. 49), s.56; Road Traffic Act 1972 (c. 20), ss.34(3), 65(3)(4), 190; Finance Act 1982 (c. 39), Sched. 5, para. 15; Highways Act 1980 (c. 66), s.115; Road Traffic Regulation Act 1984 (c. 27), ss.136, 138.

See **TAILBOARD**.

TRAIN. A series of trucks propelled by hydraulic power into a goods station, was a "train upon a railway" within s.1(5), Employers' Liability Act 1880 (c. 42) (*Cox v. Great Western Railway* 9 Q.B.D. 106). This phrase is very comprehensive. "I should think, speaking in a general way, that the legislature meant that a loco-

motive engine by itself, or anything that was drawn along a railway or was in course of being drawn along a railway by that locomotive engine, should be included in a 'train.' I doubt very much whether it would depend upon the number of carriages or the number of vehicles going upon wheels which the locomotive was taking along the railway. I should think the legislature intended a very wide scope to be given to the use of these words" (*per* Halsbury C., *McCord v. Cammell* [1896] A.C. 64). See **RAILWAY; CHARGE OR CONTROL; CONTROL**.

TRAINER. A trainer of horses is one who trains horses for other persons for profit: one who only trains his own horses does not commit a breach of an injunction restraining him from "carrying on the business of a trainer of horses upon the down" (*Lancashire v. Hunt* 11 T.L.R. 275). See Performing Animals (Regulation) Act 1925 (c. 38), s.5, which also defines "trainer."

TRAINS OF TUBS. See *Morgan v. Evans* [1926] 2 K.B. 74.

TRAITOR. See **TREASON; FREE PARDON**.

TRAMCAR. See **COACH**. See further *Yorkshire Electric Tramways v. Ellis* [1905] 1 K.B. 396, cited **HACKNEY CARRIAGE**. Cp. **TRAMWAY CAR**.

Stat. Def., Road Traffic Regulation Act 1967 (c. 76), s.104; Road Traffic Act 1972 (c. 20), s.196; Public Passenger Vehicles Act 1981 (c. 14), s.82; Road Traffic Regulation Act 1984 (c. 27), s.141.

TRAMMEL. See **MESH**.

TRAMP. A tramp ship or vessel is one "going from no particular port to no other particular port, but going wherever she can get paying freights—here to-day and there to-morrow" (*per* Lord Adam, *Watson v. Inland Revenue Commissioners* 39 L.R. 604).

TRAMROAD. See **TRAMWAY**.

TRAMWAY. (1) "Tramway," connotes a street way for tramcars constructed by steel or iron rails, not interfering with ordinary traffic but sunk in the ground in such a manner that the uppermost surface of the rail shall be on a level with the surface of the road (see s.25, Tramways Act 1870) (c. 78)); whereas tramroad connotes that the rails are not sunk in the ground but are laid on sleepers and are above the surface and are fixed in the way usual in railways": see *Blackpool Tramroad Co. v. Thornton* [1909] A.C. 264.

(2) See *North Metropolitan Tramways Co. v. London County Council* 72 L.T. 586. See *Dublin United Tramways Co. v. Fitzgerald* [1903] A.C. 99, cited **MAINTAIN**, *Swansea Improvements Co. v. Swansea* [1892] 1 Q.B. 357; *Fletcher v. London United Tramways Co.* [1902] 2 K.B. 269, and *Adams v. Shaddock* [1905] 2 K.B. 859, all cited **RAILWAY; STOCKS**. The origin of the words "tramroad" and "tramway" was discussed in *Blackpool Tramroad Co. v. Thornton* [1907] 1 K.B. 568. See also **CART ROAD**.

(3) A power to a municipal authority to work "tramways" does not include ordinary omnibuses (*A.-G. v. London County Council* [1900] W.N. 100, affirmed in House of Lords [1902] A.C. 165). See further *London County Council v. A.-G.* [1902] 168, cited **POSITION**; *A.-G. v. Leicester* [1910] 2 Ch. 359, cited **SUPPLY**; *A.-G.*

v. Manchester [1906] 1 Ch. 643, cited *CONVEY*; *ADAPT*; *Blackpool Tramroad Co. v. Bailey* [1920] 1 K.B. 380.

(4) As to liability for full damages for negligence to a passenger on a tramway worked under statutory powers, notwithstanding a restrictive notice, see *Clarke v. West Ham* [1909] 2 K.B. 858.

(5) As to the right of a tramway company or authority being a personal one and not assignable, see *Edinburgh Street Tramways Co. v. Edinburgh* [1894] A.C. 456, *inf.*; *Eccles v. South Lancashire Tramways Co.* [1912] A.C. 465.

(6) The “value of the tramway” as restricted by s.43, Tramways Act 1870 (c. 78), means such sum as it would cost to construct and establish it, minus its depreciation; and no account is to be taken of the present profits or rental value of the undertaking (*London Street Tramways Co. v. London County Council* [1894] A.C. 489; *Edinburgh Street Tramways Co. v. Edinburgh* [1894] A.C. 456). See further *Toronto Street Railway v. Toronto* [1893] A.C. 511; *Stockton v. Kirkleatham* [1893] A.C. 444, cited *PRICE*. See also *London, Deptford & Greenwich Tramways Co. and London County Council* [1905] 1 K.B. 316; *Dudley Traction Co. v. Dudley* 96 L.T. 340, cited *RAILWAY*.

(7) “Then value” within the meaning of s.43, Tramways Act 1870 (c. 78), see *Oldham, Ashton & Hyde Electric Tramways v. Ashton Corporation* [1921] 3 K.B. 511.

See *UNDERTAKING*.

TRANSACT BUSINESS. (1) Going into two shops, and possibly buying tobacco in the one and certainly buying bacon for his own consumption in the other, is not “transacting business” by a member of a benefit society, within a rule forfeiting sickpay (*Wallis v. Lomas*, *The Times*, February 10, 1890).

(2) “In any way deal or transact business”: see *Mills v. Dunham* [1891] 1 Ch. 576, cited *CUSTOMER*.

See *BUSINESS*.

TRANSACTION. (1) “Transaction” (Solicitors Remuneration Order, Sched. 1, r. 8) meant “sale.” so that on each sale under £100 the solicitor was entitled to the scale fee of £3, though on several sales the same title applied to each (*Re Thomas* [1900] 1 Ch. 454).

(2) (Finance (1909–10) Act 1910 (c. 8), s.73.) See *Kimbers & Co. v. Inland Revenue Commissioners* [1936] 1 K.B. 132 (contract for sale and conditional contract to build on property sold after completion held to be separate transactions); *A.-G. v. Cohen* [1937] 1 K.B. 478 (purchase of several lots at one auction held to be separate transactions).

(3) (Finance Act 1927 (c. 10), s.2—see Income and Corporation Taxes Act 1970 (c. 10), s.176.) The acquisition of leases of properties with a view to reletting them and either succeeding or failing to relet them is a transaction (*Barron v. Littman* [1953] A.C. 96).

(4) Redemption of debentures is a “transaction in securities” within ss.28(1) and 43(4)(i) of the Finance Act 1960 (c. 44) (now s.460(1) of the Income and Corporation Taxes Act 1970 (c. 10)) even though they create no change on the company’s assets (*I.R.C. v. Parker* [1966] A.C. 141). The payment of a dividend can constitute such a “transaction” (*Greenberg v. I.R.C.* [1972] A.C. 109). A liquidation agreement which altered the rights attached to the shares of a company was such a “transaction” (*I.R.C. v. Joiner* [1973] 1 W.L.R. 690). “Transaction in securities” (ss.460, 467) can include a liquidation agreement which affects the rights attaching

to the shares in the company (*I.R.C. v. Joiner* [1975] 1 W.L.R. 1701). Where, as part of a complicated three stage tax avoidance scheme involving three companies wholly owned by the taxpayers, loans were made to the taxpayers by a fourth independent company on terms that no interest was payable after the first seven days and that, although the loans were repayable on demand, no demand would be made unless made to all the taxpayers, it was held that these loans were “transactions in securities” within the meaning of these sections, and that they were intended to secure, and did secure, a “tax advantage” to the taxpayers (*Williams v. I.R.C.* [1980] 3 All E.R. 321).

(5) (Trustee Act 1925 (c. 19), s.57): see *Re Downshire Settled Estates* [1953] Ch. 218.

(6) (R.S.C., Ord. 16, r. 1, now Ord. 15, r. 4) necessarily means an act, the effect of which extends beyond the agent to other persons (*Bendir v. Anson* [1936] 3 All E.R. 326).

(7) “Transaction” (s.116, Companies Act 1845 (c. 16)): see *Cross v. Imperial Continental Gas Association* [1923] 2 Ch. 553. Cp. Companies Act 1948 (c. 38), s.147.

(8) “Transaction” protected (s.45, Bankruptcy Act 1914 (c. 59)): see *Re Gershon and Levy* [1915] 2 K.B. 527. See also s.47.

(9) “Transaction for value”: see *Cohen v. Mitchell* 25 Q.B.D. 262; *Hosack v. Robins* [1918] 2 Ch. 339; *Dyster v. Randall* [1926] Ch. 932.

(10) “Transaction” (Settled Land Act 1925 (c. 18), s.64(2)): see *Re Simmons, Simmons v. Public Trustee* [1956] Ch. 125).

(11) “Transactions . . . effected . . . before November 6, 1972” (Counter-Inflation (Temporary Provisions) Act 1972 (c. 74), s.2(1)). Where, under an agreement made before that date, advertisements were to be placed in magazines after that date, the “transactions” were the implementations of the agreement and not the agreement itself (*National Magazine Co. v. Department of Trade and Industry, The Times*, July 11, 1974).

“Contract, dealing or transaction”: see CONTRACT.

“Same transaction” see SAME.

TRANSCRIPT. See TENOR.

TRANSCRIPTION. “Adaptation,” “arrangement” or “transcription” (Copyright Act 1956 (c. 74), ss.2(5), (6), 49): see *Francis Day and Hunter v. Bron* [1963] 2 W.L.R. 868. Cited REPRODUCTION.

TRANSFER. (1) The operative verb “transfer” “is one of the widest terms that can be used” (*per James L.J., Gathercole v. Smith* 17 Ch. D. 1; see further *per Erle J., R. v. General Cemetery Co.* 6 E. & B. 419; see TRANSFERABLE). Cp. SUBROGATION.

(2) “Transfer” may, contextually, cut down a testamentary gift to personalty: see *Saumarez v. Saumarez* 4 My & C. 331; *Stokes v. Salomons* 20 L.J. Ch. 343.

(3) A devise of copyholds to trustees “to be transferred” by them to A on the happening of an event, gives them only an estate determinable on the event happening, and thereon the legal estate goes to A (*Doe d. Player v. Nicholls* 1 B. & C. 336).

(4) Legacies “to be transferred”: see *Lambert v. Lambert* 11 Ves. 607.

(5) Property “transferred to or vested in”: see *Kemp v. Inland Revenue Commissioners* [1905] 1 K.B. 581, cited ASSENT; DECREE.

(6) “Transfer,” e.g. of a debt, “does not necessarily mean absolute transfer” (*per* Cotton L.J., *Re Combined Weighing Co.* 43 Ch. D. 104).

(7) A document accompanying an actual pledge of goods is not a “transfer” requiring registration as a bill of sale (*Re Hall, Ex p. Close* 14 Q.B.D. 386; see further *Ex p. Hubbard, Re Hardwick* 17 Q.B.D. 695; *Charlesworth v. Mills* [1892] A.C. 231). Cp. LICENCE. See further ASSURANCE; ACTUALLY TRANSFERRED.

(8) An agreement accompanying a deposit of a registered bill of sale, by way of equitable sub-mortgage, was a “transfer or assignment” of the bill of sale within s.10, Bills of Sale Act 1878 (c. 31), and did not need to be registered (*Re Parker, Ex p. Turquand* 14 Q.B.D. 636); but a transfer of a company’s charge on chattels required registration, though the charge itself was exempt (*Jarvis v. Jarvis* 63 L.J. Ch. 10). See further *Marshall & Snelgrove Ltd. v. Gower* [1923] 1 K.B. 356, as to what was a transfer or assignment of a registered bill of sale within s.10, Bills of Sale Act 1878, *sup.*

(9) “Transfers of goods in the ordinary course of business of any trade or calling,” within the exceptions in s.4, Bills of Sale Act 1878 (c. 31): see ORDINARY COURSE; *Re Hamilton, Young & Co.* [1905] 2 K.B. 381, cited ORDINARY COURSE; *Stephenson v. Thompson* [1924] 2 K.B. 240; *Re David Allester Ltd.* [1922] 2 Ch. 211.

(10) Unregistered “assignment or transfer” of book debts: see *National Bank of Australia v. Falkingham* [1902] A.C. 585, cited ASSIGNMENT.

(11) A gift of money was a “transfer of property” within s.47(3), Bankruptcy Act 1883 (c. 52) (*Re Player, Ex p. Harvey, No. 1*, 54 L.J.Q.B. 533 (see Bankruptcy Act 1914 (c. 59), s.42(4); see also *Re A Debtor (No. 360 of 1951)* [1952] 1 All E.R. 519; SETTLEMENT). So a conveyance of shares in consideration of natural love and affection was a “transfer” within ss.14, 15, 16, Companies Clauses Consolidation Act 1845 (c. 16), and was not a “transmission” within ss.18, 19 (*Copeland v. North Eastern Railway* 6 E. & B. 277; see on this case *Nanney v. Morgan* 35 Ch. D. 603, 604).

(12) In *Re Dent* [1923] 1 Ch. 113, an equitable assignment was held not to amount to a transfer of property under s.42, Bankruptcy Act 1914 (c. 59).

(13) “Transfer of assets” (Finance Act 1936 (c. 34), s.21) in the definition of settlement included an absolute and unconditional gift (*Thomas v. Marshall* [1953] A.C. 543).

(14) “Previously conveyed or transferred” (Finance Act 1938 (c. 46), s.50) (*Escoigne Properties v. I.R.C.* [1958] A.C. 549).

(15) A payment in cash to a company on a subscription for shares was not a “transfer of property” to the company within s.46 of the Finance Act 1940 (c. 29), which concerns the payment of estate duty in respect of the deceased’s benefits from certain companies (*St. Aubyn v. A.-G. (No. 2)* [1952] A.C. 15).

(16) Payment to the taxpayer of the money price of an asset sold by him was held to be a “transfer of assets” to him within s.28(2)(d) and 28(i) and (ii) of the Finance Act 1960 (c. 44) (*Cleary v. I.R.C.* [1968] A.C. 766).

(17) “Any transfer to a tenant of any burden” (Increase of Rent and Mortgage Interest (Restrictions) Act 1920 (c. 17), s.2(3)) included a transfer to the landlord of a liability to repair, even though the landlord had previously done the repairs, and the provision of hot water (*Asher v. Seaford Court Estates* [1950] A.C. 508, approving *Winchester Court v. Miller* [1944] K.B. 734; *Property Holding Co. v. Clark* [1948] 1 K.B. 630). “Transfer of a burden” within s.4(3) occurred whenever a given letting placed on the tenant a burden or liability which rested on the landlord under the terms of the tenancy by reference to which the standard rent was fixed, or

conversely placed on the landlord a burden or liability which rested on the tenant under those terms (*Regis Property Co. v. Redman* [1956] 2 Q.B. 612).

(18) "Transfer" (s.10, Factors Act 1889 (c. 45)): see *Anton Jurgens Margarine Fabrieken v. Louis Dreyfus & Co.* [1914] 3 K.B. 40, distinguished in *Laurie v. Dudin* [1925] 2 K.B. 383; affirmed [1926] 1 K.B. 223.

(19) "Sale, transfer or other disposition" of an interest in a ship: see *Deddington S.S. Co. v. Inland Revenue Commissioners* [1911] 1 K.B. 1078, cited DISPOSITION.

(20) The requirement of notice on a "transfer of a licence" (s.40(2), Licensing Act 1872 (c. 94)) did not apply to an application under s.14, Alehouse Act 1828 (c. 61) (*R. v. Hughes* [1893] 2 Q.B. 530). See further *R. v. Cotham* [1898] 1 Q.B. 802, and *Wilson v. Crewe Justices* [1905] 1 K.B. 491, cited THERETOFORE. As to the Licensing (Consolidation) Act 1910 (c. 24), see *Wernham v. R.* [1914] 1 K.B. 468; and ss.22–28. See also *R. v. Newington Licensing Justices, Ex p. Conrad* [1948] 1 K.B. 681.

(21) "Transfer of a mortgage," as regards stamp duty: see *Wale v. Inland Revenue Commissioners* 4 Ex. D. 270; *Humphreys v. Inland Revenue Commissioners* 81 L.T. 199. See BENEFIT; MARKETABLE SECURITY.

(22) That which, in effect, did "transfer" or "divest" "powers" or "liabilities" within the second part of s.11, Electric Lighting Act 1882 (c. 56), was within that provision, though the parties might declare that nothing in their arrangement should be deemed to do so (*Sudbury v. Empire Electric Co.* [1905] 2 Ch. 110, cited SUPPLY; *Birkdale, etc., Co. v. Southport* [1926] A.C. 355).

(23) Transfer of shares: see SHARE; USUAL FORM. Generally a legal title to shares, (*Ireland v. Hart* [1902] 1 Ch. 522). As to the implied obligation by the transferor not to hinder registration, and as to a transfer in blank, see *Hooper v. Herts* [1906] 1 Ch. 549. As to a transfer to a man of straw to avoid responsibility, see *Re Discoverers Finance Corporation* [1910] 1 Ch. 312.

(24) A transfer of shares in a company was held not to include a letter signed by a shareholder abandoning his rights to bonus shares in favour of a nominee: see *Re Poole Shipping Co.* [1920] 1 Ch. 251; Companies Act 1948 (c. 38), ss.73–80.

(25) There is no transfer of shares from one person to another when an executor is registered in respect of shares forming part of the deceased's estate (*Moodies v. W. & J. Shepherd (Bookbinders)* [1949] 2 All E.R. 1044).

(26) (Companies Act 1929 (c. 23), s.154.) The transfer under this section of the property and liabilities of one company to another did not operate to transfer a contract of service previously existing between the transferor company and its servant (*Nokes v. Doncaster Amalgamated Collieries Ltd.* [1940] A.C. 1014). See Act of 1948 (c. 38, s.208).

(27) Estate duty was not payable under s.2(1)(c) of the Finance Act 1894 (c. 30), where a transfer of shares was executed more than three years before the death of the donor but was registered less than three years before his death (*Re Rose* [1952] Ch. 499).

(28) Where a ship is transferred by separate bills of sale from the several owners of shares therein, each bill of sale is a "transfer" on which is payable the registration fee prescribed by s.3, Merchant Shipping, etc., Act 1898 (c. 44) (*Harrowing S.S. Co. v. Toohey* [1900] 2 Q.B. 28).

(29) "Conveyance or transfer operating as a voluntary disposition *inter vivos*" (Finance (1909–10) Act 1910 (c. 8) s.74(1)): see *Fuller v. Inland Revenue Commissioners* [1950] 2 All E.R. 976.

(30) "If a trade or business . . . is transferred" (Contracts of Employment Act 1963 (c. 49), Sched. 1, para. 10(2)). This paragraph covers the transfer of any trade

or business which was run by the owner as a separate and self-contained part of his operations in which assets, stock-in-trade and the like are engaged (*Ault (G. D.) (Isle of Wight) v. Gregory* (1967) 3 K.I.R. 590). It is not necessary that there should have been an express assignment of the goodwill, particularly if the transferor has bound himself not to compete with the transferee (*Kenmir v. Frizzell* [1968] 1 W.L.R. 329). The sale by one company to another of a factory and adjoining land in circumstances where most of the staff accepted work with the new owners, and continued to use the same tools as before, was not a “transfer” within the meaning of this paragraph, because the new owners manufactured a different type of machine, and the selling company continued to carry out its business elsewhere (*Woodhouse v. Brotherhood* [1972] 2 Q.B. 520).

Transfer on sale: see SALE.

Stat. Def., Lunacy Act 1890 (c. 5), s.341; Trustee Act 1925 (c. 19), s.68; Land Registration Act 1925 (c. 21), ss.18 and 21; Companies Act 1948 (c. 38), s.80; Firearms Act 1968 (c. 27), s.57(4); Income and Corporation Taxes Act 1970 (c. 10), s.482(10); Highways Act 1980 (c. 66), s.235(3).

See ASSIGN; CONVEYANCE; DECREE; DISPOSE OF; LEGALLY; NEGOTIATE; TRANSMISSION; UNDERLEASE.

TRANSFERABLE. An interest which by statute or otherwise is made “not transferable” cannot be parted with either by act of parties or by operation of law (*Gathercole v. Smith* 17 Ch. D. 1). In that case, Lush L.J., said, “The word ‘transferable’ is of the widest possible import, and includes ‘every’ means by which the property may be passed from one person to another.”

“Transferable vote.” Stat. Def., Representation of the People Act 1918 (c. 64), s.41(6).

TRANSFeree. (1) “Transferee” (s.31(4), Bills of Exchange Act 1882 (c. 61)): see *Good v. Walker* 61 L.J.Q.B. 736.

(2) As to the implied indemnity by a transferee on (however innocently) obtaining by a forged transfer registration of himself as proprietor of shares or other property, see *Sheffield v. Barclay* [1905] A.C. 392, and *Bank of England v. Cutler* [1908] 2 K.B. 208, both cited WARRANTY; *A.-G. v. Odell* [1906] 2 Ch. 47, cited RECTIFY.

Transferee of a bill: see NEGOTIATE.

TRANSHIPMENT. (1) Due diligence in transhipment is not accomplished if the transhipment be delayed, *e.g.* in order to save costs of lighters or money which might have to be paid for freight; for the goods ought not to be delayed for such a reason (*per Erle C.J., Carali v. Xenos* 2 F. & F. 740).

(2) “Partial loss from transhipment,” in a marine policy: see *per Matthew J., Pink v. Fleming* 25 Q.B.D. 396, cited CONSEQUENT.

(3) “Risk of transhipment”: see *Australian Agricultural Co. v. Saunders* L.R. 10 C.P. 668, cited INSURED ELSEWHERE.

(4) “For transhipment only,” under s.9 of the Provisional Order in the Schedule to the Port of London (Port Rate on Goods) Provisional Order Act 1910 (c. c): see *Port of London Authority v. British Oil & Cake Mills* [1915] A.C. 993.

TRANSIT. (1) A policy of insurance against the loss of securities by the dishonesty of the employees of the firm with whom they were deposited “whilst in transit between any houses or places within 100 miles of Philadelphia” was held not to

cover a loss which took place intra-murally between the vaults and the customer's reception room: see *Pennsylvania Co., etc. v. Mumford* [1920] 2 K.B. 537.

(2) On a claim on a policy indorsed to cover goods "temporarily housed during the course of transit" it was held that goods collected together at the insured's premises ready to be loaded on his vehicles were covered (*Crow's Transport v. Phoenix Assurance Co.* [1965] 1 W.L.R. 383).

(3) Goods on lorries which arrived at the consignee's depot after working hours, and were taken into the depot but not unloaded, were still "in transit" within the terms of the carriage agreement (*Tomlinson (A.) (Hauliers) v. Hepburn* [1966] A.C. 451).

Stat. Def., Food and Drugs Act 1955 (c. 16), s.135(1).

Stoppage in transitu: see STOPPAGE.

See DELAY IN TRANSIT.

TRANSLATION. (1) "'Translation,' in common sense, signifies the version out of one language into another; but in a more confined, denotes the setting from one place to another; as to remove a bishop from one diocese to another is called 'translating' " (Cowel).

(2) As distinguished from an imitation or adaptation, a "translation" of a book or play, within the International Copyright Acts, should be a full and faithful (not, necessarily, a literal) representation of the whole book or play, so "that the English people should have the opportunity of knowing the foreign work as accurately as it is possible to know it by the medium of a version in English" (*Wood v. Chart* L.R. 10 Eq. 193; see further *Lauri v. Renad* [1892] 3 Ch. 402).

TRANSMISSIBLE. A bequest of residue to the persons who "shall become entitled to a vested transmissible interest," means an interest "capable of transmission after death" (*per* Stirling J., *Re Jodrell* 34 S.J. 129; a definition unaffected by the reversal of the judgment [1891] A.C. 304). See further *Nannock v. Horton* 7 Ves. 402.

TRANSMISSION. (1) "Transmission" of the property in a ship, other than by transfer (s.58, Merchant Shipping Act 1854 (c. 104)—see s.27, Merchant Shipping Act 1894 (c. 60) means "transmission by operation of law, unconnected with any direct act of the party to whom the property is transmitted"; and therefore "a sale by licitation is not such a transmission" (*Chasteauneuf v. Capeyron* 7 App. Ca. 127).

(2) So, "transmission" of company shares is effected by devolution of law, as distinguished from a "transfer," which is accomplished by the act of parties; and therefore where table A, Companies Act 1862 (c. 89), applied *simpliciter*, a trustee in bankruptcy was not subject to Art. 10 of that table (*Re Bentham Mills Co.* 11 Ch. D. 900), and the trustee was entitled to be entered upon the register in the same way, and to have the certificate in the same form, as the bankruptcy (*Re Key* [1902] 1 Ch. 467); see now Table A, Companies Act 1948 (11 & 12 Geo. 6, c. 38). See TRANSFER.

(3) "Transmission of the goods," in an exception in a bill of lading: see *Hayn v. Culliford* 3 C.P.D. 417, 418, affirmed 4 C.P.D. 182.

(4) A foreign executorship created no "transmission of interest or liability" within Judicature Rules 1875, Ord. 50, r. 4; representation has to be obtained in England (*per* North J., *Morrice v. Smart* 26 S.J. 752, repudiating the inaccurately reported decision in *Jameson v. Marshall* 46 L.T. 480). A bankruptcy receiving order against a party to an action did not cause such "a change or transmission of

interest or liability” so as to require the addition of the official receiver as a party (*Re Berry* [1896] 1 Ch. 939).

(5) “Transmission machinery” (Factories Act 1937 (c. 67), s.152, now Factories Act 1961 (c. 34), s.176). Machinery which is covered by this definition does not cease to be transmission machinery when the motive power is cut off (*Thomas (Richard) & Baldwins v. Cummings* [1955] A.C. 321). A hydraulic accumulator was not “transmission machinery” (*Weir v. Andrew Barclay & Co.* (O.H.) 1955 S.L.T. (Notes) 56).

Stat. Def., Wireless Telegraphy (Explanation) Act 1925 (c. 67), s.1: Trade Marks Act 1938 (c. 22), s.68; Copyright Act 1956 (c. 74), s.48(3).

“Transmission line”: see Electricity (Supply) Act 1926 (c. 51), s.51.

“Transmission machinery.” Stat. Def., Factories Act 1961 (c. 34), s.176(1).

TRANSMIT. (1) “To transmit”—*e.g.* an appeal case under s.2, Summary Jurisdiction Act 1857 (c. 43)—meant to lodge it, *i.e.* accomplish its proper and actual reception; merely sending it off did not suffice (*Aspinall v. Sutton* [1894] 2 Q.B. 349; see further **FIRST**; **SHALL**). But to “transmit” a return of personal expenses under s.33(1)(5), Corrupt and Illegal Practices Prevention Act 1883 (c. 51), meant to **REMIT**, *i.e.* to send it off (*Mackinnon v. Clark* [1898] 2 Q.B. 251; see **DAYS**).

(2) When a person speaks into a telephone, “he sends what he says through the wire, *i.e.* transmits it” (*A.-G. v. Edison Telephone Co.* 6 Q.B.D. 244), in which case it was held that a telephone was an “apparatus for transmitting messages or other communications” within s.3, Telegraph Act 1869 (c. 73).

TRANSPORT. “Transport of passengers” (Finance Act 1972 (c. 41), Sched. 4, Group 10, Item 4) does not cover the provision of rides on a “big dipper” in a fun fair (*Customs and Excise Commissioners v. Blackpool Pleasure Beach Co.* [1974] 1 W.L.R. 540). Payments by students for cards entitling them to reduced rate rail travel were held to be advance part-payment for the service of “transport of passengers” within the meaning of this item (*British Railways Board v. Customs and Excise Commissioners* [1977] 1 W.L.R. 588).

TRANSPORTATION. For the meaning and effect of the punishment of transportation and its regulations, see Transportation Acts 1824 and 1825 (c. 84), (c. 69), and 1852 (c. 99), s.15; *Bullock v. Dodds* 2 B. & Ald. 258; Jacob.

TRAP. (1) A visitor who goes on to premises upon business which concerns the occupier and upon his invitation, express or implied, and who uses reasonable care on his part for his own safety is entitled to expect that the occupier shall on his part use reasonable care to prevent injury from unusual danger which he knows or ought to know (*Indermaur v. Dames* L.R. 1 C.P. 274, 288; affirmed, L.R. 2 C.P. 311).

(2) The duty of the invitor towards the invitee is to use reasonable care to prevent damage from unusual danger which he knows or ought to know. If the danger is not such that he ought to know of it, his liability does not extend to it (*per Buckley L.J.*, in *Norman v. Great Western Railway* [1915] 1 K.B. 584, 592; *Mersey Docks, etc., Board v. Procter* [1923] A.C. 253).

(3) The words “unusual danger” in *Indermaur v. Dames* means a danger unusual for the particular person, and the word “unexpected” might avoid misapprehension (*per Phillimore L.J.*, in *Norman v. Great Western Railway*).

(4) There is no distinction between that which has been called a trap and ordinary

actionable negligence, except so far as the word “trap” may be used to designate a negligent act which is calculated to mislead a person using ordinary care and caution (*per* Lopes J., in *Watkins v. Great Western Railway* 46 L.J.Q.B. 817, 822; *Sutcliffe v. Clients Investment Co.* 94 L.J.K.B. 113).

(5) A trap is a concealed source of mischief (*per* Denman J., in *White v. France and Others* 46 L.J.C.P. 823).

(6) In *Latham’s Case* Hamilton L.J. (p. 416) said: “There the presence in a frequented place of some object of attraction, tempting him (a child) to meddle where he ought to abstain, may well constitute a trap, and in the case of a child too young to be capable of contributory negligence it may impose full liability on the owner or occupier, if he ought as a reasonable man to have anticipated the presence of a child and the attractiveness of the peril of the object”; see also *Cooke v. Midland Railway Co. of Ireland* [1909] A.C. 229; *Mercer v. South Eastern Railway Co.’s Managing Committee* [1922] 2 K.B. 549; *Coleshill v. Lord Mayor, Aldermen and Citizens of the City of Manchester* [1928] 1 K.B. 776.

(7) See also *Latham v. Johnson (Richard) and Nephew Ltd.* [1913] 1 K.B. 398, cited *LICENSEE*; *Glasgow Corporation v. Taylor* [1922] 1 A.C. 44, and cases there cited; *Addie & Sons (Collieries) v. Dumbreck* [1929] A.C. 359.

See also *ALLUREMENT*.

TRAVEL. (1) “‘Travelling,’ in a large sense, means a going from one place to another” (*per* Ellenborough C.J., *White v. Beazley* 1 B. & Ald. 171); therefore, a coach and horses hired to take a party from Portsea to the theatre at Portsmouth (a distance of 2 miles upon a public road) was held a “travelling” within s.8, Post Horse Duties Act 1808 (c. 98); and so of a chaise and horses hired to take a party out to dinner and fetch back (same case; see further *Ramsden v. Gibbs* 1 B. & C. 319). See *TRAVELLER*.

(2) “Travelling as an ordinary passenger”: see *M’Millan v. Sun Life Assurance* 4 Sc. L.T. 66, *BICYCLE*.

(3) “Travelling” (Regulation of Railways Act 1889 (c. 57), s.5). A person is still “travelling” for the purpose of s.5 after he has alighted from his train and before he passes the ticket barrier (*Bremme v. Dubery* [1964] 1 W.L.R. 119).

(4) “Travel” (London Transport Board By-Laws, No. 8(1)). A person is still travelling when he arrives at the ticket barrier at his destination (*Murphy v. Verati* [1967] 1 W.L.R. 641).

(5) “Travels . . . on foot” (Pedlars Act 1871 (c. 96), s.3). A man who goes to a fixed point by car and proceeds to go from house to house on foot is “travelling” within the meaning of this section (*Sample v. Hulme* [1956] 1 W.L.R. 1319).

(6) As to County Court Rules 1936, Ord. 25, r. 43, which deals with the case of a debtor living outside the district of a county council which he is ordered to attend, the words “travelling expenses” mean a sum sufficient to pay for the debtor’s journey from his house to the court and back again and not merely to the court: see *Ward v. Nield* [1917] W.N. 257.

Travelling crane: see *OVERHEAD*.

“Travelling post”: see *POST*.

“Travelling road” (Coal Mines Act 1911 (c. 50), s.49): see *ROAD*.

“Travelling showman.” See *SHOWMAN*.

TRAVELLER. (1) A person could not be a “bona fide traveller,” within the Licensing Acts, “unless the place where he lodged during the preceding night is at

least three miles distant from the place where he demands to be supplied with liquor, such distance to be calculated by the nearest public thoroughfare” (Licensing Act 1874 (c. 49), s.10; see thereon *Coulbert v. Troke* 1 Q.B.D. 1; *Cowap v. Atherton* [1893] 1 Q.B. 49; cp. DISTANCE). For the decisions on this phrase prior to the statutory definition just quoted, see *Taylor v. Humphreys* 30 L.J.M.C. 242; *Taylor v. Humphries* 34 L.J.M.C. 1, followed in *Davis v. Scrase* L.R. 4 C.P. 172; *Fisher v. Howard* 34 L.J.M.C. 42; *Peaches v. Colman* L.R. 1 C.P. 324; *Peplow v. Richardson* L.R. 4 C.P. 168. Whether business or pleasure be the object of the traveller was (*Taylor v. Humphries* sup.; *Atkinson v. Sellers* 28 L.J.M.C. 12), wholly immaterial, nor was it material that he had, or had not, a bona fide thirst (per Cave J., *Oldham v. Sheasby* 60 L.J.M.C. 81); but if his main object in travelling was to get a drink during prohibited hours, then he was not a “bona fide” traveller (*Penn v. Alexander* [1893] 1 Q.B. 522, cited BONA FIDE; but see *Williams v. McDonald* [1899] 2 Q.B. 308, inf.; TRAVEL). See hereon *Copley v. Burton* L.R. 5 C.P. 489; *Morgan v. Hedger* L.R. 5 C.P. 485; *Roberts v. Humphreys* L.R. 8 Q.B. 483.

(2) Persons at a railway station “arriving at, or departing from, such station by railroad,” were for the purposes of the Licensing Acts on the same level as bona fide travellers (Licensing Act 1874 (c. 49), s.10). Their motive, though it be that of getting drink, was immaterial (*Williams v. McDonald* [1899] 2 Q.B. 308; but see *Penn v. Alexander* sup.).

(3) (a) Commercial traveller, i.e. “a man who travels about the country, soliciting orders which are sent to the employer” (per Grantham J., *Killick v. Graham* [1896] 2 Q.B. 196). One who spends most of his time in attending race meetings as a backer of horses, but who also solicits orders for hops, receiving a commission therefor, is a commercial traveller (*Matthews v. Buchanan* 5 T.L.R. 373). A commercial traveller was also indicated in the exemption from certain excise penalties given by the proviso to s.17, Revenue Act 1867 (c. 90), to “a bona fide traveller taking orders for goods which his employer is duly licensed to deal in or sell.” A stationary agency was not within that exemption (*Stallard v. Marks* 3 Q.B.D. 412, cited RETAILER); but one who was an employed traveller, and who really travelled, was none the less entitled to the exemption because he took orders during a temporary pause on his journeys (Bowen, arg. *ibid.*), or because he, independently of his employer, occupied an office at which he occasionally took orders (*Stuchbery v. Spencer* 55 L.J.M.C. 141). On the other hand, an agent who acted for a person at a distance, but who only solicited orders in the town where he resided, was not a “bona fide traveller” within the exemption (*Killick v. Graham* sup.); see further SOLICIT. The employer of a commercial traveller was not bound to keep him travelling (*Lagerwall v. Wilkinson* 80 L.T. 55).

(b) As to scope of commercial traveller’s authority, see *International Sponge Importers Ltd. v. Watts* 55 S.J. 422.

(c) Commercial traveller (Finance (No. 2) Act 1915 (c. 89), s.39), which excluded persons carrying on this business from the provisions respecting the payment of excess profits duty, was not limited to the case of a commercial traveller who was employed as a servant by a particular firm (*Binney v. Inland Revenue Commissioners* [1920] 3 K.B. 348).

(4) A traveller, or such like person, entitled at common law to be received as a guest in an inn, does not include a person resident in the same country town as that in which the inn is situate and “merely walking about the town for his own recreation and amusement” (*R. v. Rymer* 2 Q.B.D. 136, citing *R. v. Luellin* 12 Mod. 445; see further *Sealey v. Tandy* [1902] 1 K.B. 296, cited INN). The length of time

that a man may remain at an inn does not affect his character as a traveller; unless he be received for a definite term under a special contract, or has stayed long enough to show that his travelling days are done (*Lamond v. Richard* [1897] 1 Q.B. 541). So, "it is not at all necessary that he should be travelling a long journey" (*Orchard v. Bush* [1898] 2 Q.B. 284, cited GUEST).

(5) As regards the common law liability of an innkeeper for the property of his guests, a guest must be a traveller, but the term "traveller" does not include all comers; it excludes, for instance, (a) the innkeeper's family living in the inn, (b) the innkeeper's servant, (c) the innkeeper's private guests, (d) lodgers at the inn, and (e) persons resorting to the inn for purposes unconnected with the enjoyment of the facilities which it provides as an inn, e.g. to repair the drains or to sell the innkeeper a sewing machine. A person who visits the inn to drink and entertain his friends is a traveller, and the innkeeper is liable for loss of a motor car left in a car park outside the inn (*Williams v. Linnitt* [1951] 2 K.B. 565); see also *Tinsley v. Dudley* [1951] 2 K.B. 18; *Gee, Walker & Slater v. Friary Hotel (Derby)* 66 T.L.R. (Pt. 1) 59.

"Such liquor to bona fide travellers": see SUCH.

TRAVERSE. (1) To traverse; " 'traverse' sometimes signifieth to deny, sometimes to overthrow or undoe a thing done" (Termes de la Ley, *Travers*, which see for illustrations; see also Cowel; Jacob).

(2) Particulars will be ordered of a traverse of a negative allegation if the traverse is a negative pregnant amounting to an affirmative allegation; but traverse of a negative allegation does not necessarily amount to more than a mere denial putting the other party to proof. The whole matter discussed: *Pinson v. Lloyds & National Provincial Foreign Bank Ltd.* [1941] 2 K.B. 72.

See TOLL TRAVERSE.

TRAWLING. "A steam trawler dragging her trawl along the bottom of the sea" is "engaged in trawling" (*per* Evans P., in *The Grovehurst* [1910] P. 316, cited STATIONARY).

TREAD. "Tread"; "tread pattern" (Motor Vehicles (Construction and Use) Regulations 1973 (No. 24), reg. 99(1)(f)). The "tread" of a tyre is that part in contact with the road in normal driving conditions. "Tread pattern" does not include an area of flat rubber so that the "tread pattern," for the purposes of this section, stops where there is not more pattern to probe or measure (*Sandford v. Butcher* [1978] R.T.R. 132).

TREASON. (1) " 'Treason' is in two manners, that is to say, graund treason, and petit treason" (Termes de la Ley). Grand treason: see HIGH TREASON. " 'Petit treason' is when a servant kills his master, a wife her husband; or when a secular or religious man kills his prelate or superior to whom he owes faith and obedience; and in how many other cases petit treason may be committed, see Crompton's Justice of the Peace" (Cowel). Petit treason is now "deemed to be murder only, and no greater offence" (Offences against the Person Act 1828 (c. 31), s.2).

(2) Treason felony: see Treason Felony Act 1848 (c. 12), especially s.3; on which see *Mulcahy v. The Queen* L.R. 3 H.L. 306.

(3) A person may be guilty of treason for an act committed outside the realm if

he is an alien holding a British passport (*Joyce v. Director of Public Prosecutions* [1946] A.C. 347).

TREASURE TROVE. (1) “ ‘Treasure trove’ is when any money, gold, silver, plate, or bullion is found in any place, and no man knoweth to whom the property is, then the property thereof belongeth to the King, and that is called ‘treasure trove,’ that is to say, treasure found. But if any mine of metall be found in any ground that always pertaineth to the lord of the soile, except it be a mine of gold or silver, which shall be always to the King, in whose ground soever they be found” (*Termes de la Ley*). See further 1 Bl. Com. 295; Jacob; **MINE**.

(2) “Several definitions of treasure trove have been cited to me, not substantially differing one from another. I will take that stated in Chitty on Prerogative, p. 152: ‘Treasure trove is where any gold or silver—in coin, plate, or bullion—is found concealed in a house, or in the earth, or other private place, the owner thereof being unknown, in which case the treasure belongs to the King, or his grantee having the **FRANCHISE** of treasure trove; but if that laid it be known, or afterwards discovered, the owner, and not the King, is entitled to it; this prerogative right only applying in the absence of an owner to claim the property. If the owner, instead of hiding the treasure, casually lost it, or purposely parted with it in such a manner that it is evident that he intended to abandon the property altogether and did not purpose to resume it on another occasion, as if he threw it on the ground or other public place or in the sea, the first finder is entitled to the property as against every one but the owner, and the King’s prerogative does not in this respect obtain.’ So that it is the ‘hiding,’ and not the abandonment of the property that entitles the King to it” (*per* Farwell J., *A.-G. v. British Museum* [1903] 2 Ch. 598). See further **FRANCHISE**; *cp.* **ROYALTIES**.

(3) In the case of *Attorney-General of The Duchy of Lancaster v. Overton (Farms)* [1980] 3 W.L.R. 869 the court preferred the opinions of *Termes de la Ley*, Sir Edward Coke (Third Institute), J. Chitty (Prerogatives of the Crown) and Mr Justice Chitty in *Elws v. Brigg Gas Co.* (1886) 33 Ch. D. 562, 567 to those of Bracton and Blackstone, and confirmed that the crown’s prerogative is restricted to coin, plate or bullion made of gold or silver only. The court also held that Roman coins containing no more than 5.85 per cent. silver were not “silver” and therefore not “treasure trove.” This decision was confirmed by the Court of Appeal ([1982] 2 W.L.R. 397).

(4) As to the offence of concealing treasure trove, see Steph. Cr. (9th ed.) 365.

(5) The jurisdiction of the coroner is limited to inquiring who was, or was suspected to be, the finder of the treasure (*A.-G. v. Moore* [1893] 1 Ch. 676).

TREASURER. (1) “Any treasurer, collector, officer, or other person, appointed” by a local authority to sue, included a banker; and in no special mode of appointment was prescribed, his employment was equivalent to appointment (*Frost v. Boland* 5 B. & C. 611). *Cp.* *Williams v. Golding* L.R. 1 C.P. 69, cited **OTHER**.

(2) As to the position of a treasurer of a municipal borough, see *A.-G. v. De Winton* [1906] 2 Ch. 106.

(3) The treasurer of a friendly society was not, as such, its “clerk or servant” within s.68, Larceny Act 1861 (c. 96) (*R. v. Tyree* L.R. 1 C.C.R. 177). The office could not be filled by an incorporated company; if in fact such a company had been the treasurer, the winding-up of the company was not an “insolvency” so as to entitle the society to the preference given by s.15(7). Friendly Societies Act 1875

(c. 60) (*Re West of England & South Wales District Bank* 11 Ch. D. 768). See further *Barrett v. Markham* L.R. 7 C.P. 405, cited WITHHOLD.

TREAT. (1) A notice to treat (s.18, Lands Clauses Consolidation Act 1845 (c. 18)—see now Compulsory Purchase Act 1965 (c. 56), s.5) is an inchoate contract for the sale and purchase of the land included in it, which becomes consummate when the price is fixed by agreement, arbitration, or the verdict of a jury (*per Cottenham C.*, *Adams v. London & Blackwall Railway* 19 L.J. Ch. 559, 560; *Harding v. Metropolitan Railway* 7 Ch. 158); when given, the owner can compel its consummation (*ibid.*; *Fotherby v. Metropolitan Railway* L.R. 2 C.P. 188).

(2) The owner is entitled to the value of the property as at the date of the notice to treat (*Phoenix Assurance v. Spooner* [1905] 2 K.B. 753); on that value being ascertained, the company of body giving the notice may be required to take a conveyance of the property (*Re Cary-Elwes* [1906] 2 Ch. 143). But any interest in such land, or in any land of the owner adjoining thereto, acquired by, or from, the owner subsequently to the notice to treat, is not a subject for compensation (*Wilkins v. Birmingham* 25 Ch. D. 78; *Mercer v. Liverpool, etc., Railway* [1903] 1 K.B. 652 [1904] A.C. 461, on which last case see *Dawson v. Great Northern & City Railway* [1905] 1 K.B. 260, cited CHOSE IN ACTION). See hereon *Zick v. London United Tramways* [1908] 2 K.B. 126. Cp. *Re Bwllfa, etc., Collieries and Pontypridd Waterworks Co.* [1901] 2 K.B. 805, cited FULL COMPENSATION, and *Fletcher v. Lancashire & Yorkshire Railway*, and *Richard v. Great Western Railway* [1902] 1 Ch. 909, cited POSSESSION.

(3) As to withdrawing the notice to treat and giving a fresh one, see *Ashton Vale Iron Co. v. Bristol* [1901] 1 Ch. 591; *Cardwell v. Midland Railway* 21 T.L.R. 22. See further under Taylor's Act, *Wild v. Woolwich* [1910] 1 Ch. 35. See COMPULSORY POWERS; PUT IN FORCE.

(4) "Treated as a market garden," under s.48, Agricultural Holdings Act 1923 (c. 9): see *Re Masters and Duveen's Arbitration* [1923] 2 K.B. 729. See now Agricultural Holdings Act 1948 (c. 63), s.67.

(5) "Treated the petitioner with cruelty" (Judicature Act 1925 (c. 49), s.176; Matrimonial Causes Act 1950 (c. 25), s.1(1)(c); Matrimonial Causes Act 1965 (c. 72), s.1(1)(iii)) indicated conduct aimed at the offended spouse; this was in contrast to the earlier Acts, which used the phrase "guilty of cruelty" (*Kaslefsky v. Kaslefsky* [1951] P. 38). "Treated" connoted a conscious act, see *Swan v. Swan* [1953] P. 258.

"Treated . . . as a child of their family" (Matrimonial Proceedings and Property Act 1970 (c. 45), s.27(1)(b), now Matrimonial Causes Act 1973 (c. 18), s.52), see CHILD, CHILDREN.

"Notice to treat." Stat. Def., Compulsory Purchase Act 1965 (c. 56), s.5.

TREAT AND VIEW. An advertisement inviting applications for purchase to be made to A "to treat and view," gives A "authority to negotiate and to make and receive proposals, but not to conclude a sale" (*per Bovill C.J.*, *Godwin v. Brind* L.R. 5 C.P. 299, n.). Cp. INTRODUCE; PROCURE.

See VIEW.

TREATMENT. (1) National Insurance Act 1911 (c. 55): see *Bennet v. Scottish Board of Health* [1921] S.C. 772.

(2) "Treatment" (National Health Service Act 1946 (c. 81), s.79(1)) includes nursing and not only medical and dental treatment by a doctor or dentist (*Minister*

of Health v. Royal Midland Counties Home for Incurables at Leamington Spa General Committee [1954] Ch. 530; [1954] 2 W.L.R. 755; [1954] 1 All E.R. 1013).

(3) "Treatment advice or attendance in connection with the fitting of artificial teeth" (Dentists Act 1921 (c. 21), s.14(2)). Taking impressions for the purpose of mending a split dental plate was held to be "treatment" within the meaning of this section (*Almy v. Thomas* [1953] 1 W.L.R. 1296). But in another case the repair of a denture was held not to be "treatment, advice and attendance" within the meaning of this section (*Twyford v. Puntschart* 63 T.L.R. 329).

*"Process or treatment": see PROCESS.

Stat. Def., National Health Insurance Consolidated Regulations 1924, Pt. I; Medicines Act 1968 (c. 67), s.132.

TREATY. Stat. Def., International Copyright Act 1886 (c. 33), s.11; Monopolies and Mergers Act 1965 (c. 50), s.4(4); European Communities Act 1972 (c. 68), s.1(4).

TREES. (1) "Where the grant is of all a man's 'trees,' there shall pass no more of the soil but so much as shall serve for the nutriment of the trees, and the owner of the soil shall have the grass growing thereupon also" (Touch. 95). See WOOD.

(2) "The word 'trees,' generally speaking, means wood applicable to buildings, and does not include orchard trees" (*per* Littledale J., *Bullen v. Denning* 5 B. & C. 851); and an exception in a lease of "trees," "means trees useful for their wood" (*per* Mansfield C.J., *Wyndham v. Way* 4 Taunt. 318), and will not, as a rule, extend to "fruit" trees, unless specially named; and neither an exception nor a grant of "timber trees and other trees" will pass fruit trees (*Bullen v. Denning* *sup.*, which see for the cases hereon), even though the phrase goes on to say "but not the annual fruit thereof," for "fruit," there, refers to the mast of timber trees (*ibid.*). See FRUIT; TIMBER.

(3) "Trees," in so far as they can be the subject of a preservation order under s.60 of the Town and Country Planning Act 1971 (c. 78), can include a coppice. It was here held that a preservation order on a coppice was valid, notwithstanding the fact that by definition a coppice has regularly to be cut and pruned (*Bullock v. Secretary of State for the Environment* (1980) 254 E.G. 1097).

Overhanging trees: see LOP. See further NUISANCE.

"Tree preservation order." Stat. Def., Town and Country Planning Act 1947 (c. 51), s.28(1); Town and Country Planning Act 1971 (c. 78), s.60.

TRESPASS. (1) " 'Trespass' signifies any transgression of the law under treason, felony, or misprision of either" (Cowel; see further Jacob).

(2) "A trespass is an injury committed with violence; and this violence may be either actual or implied; and the law will imply violence, though none is actually used, where the injury is of a direct and immediate kind, and committed on the person, or tangible and corporeal property, of the plaintiff. Of actual violence, an assault and battery is an instance; of implied, a peaceable but wrongful entry upon the plaintiff's land" (Stephen on Pleading, ch. 1). See hereon *Scott v. Shepherd* 1 Sm. L.C. 480; Rosc. N.P. (20th ed.) 916 *et seq.*

(3) (Limitation Act 1939 (c. 21), s.2(1)(a) proviso (added by the Law Reform (Limitation of Actions, etc.) Act 1954 (c. 36), s.2(1)). An action for trespass to the person is an action for "breach of duty" within the proviso and is therefore statute-barred after three years. Actions for unintentional personal injuries should now, however, be founded on negligence (*Letang v. Cooper* [1964] 3 W.L.R. 573).

Trespass on the case: see *CASE*.

Action of trespass *de bonis asportatis*: see *TROVER*.

See *WILFULLY TRESPASS*.

TRESPASSER. “Trespasser” (Theft Act 1968 (c. 60), s.9(1)(a)(b)). A person enters premises as a trespasser within the meaning of this section if he enters knowing that he is a trespasser or else reckless as to whether he is a trespasser or not. A person who has general permission to enter particular premises (as, in this case, the son of the owner) may nevertheless be a “trespasser” if he enters knowing that he is acting in excess of such general permission, or being reckless as to whether he is so acting (*R. v. Jones (John)*; *R. v. Smith (Christopher)* [1976] 1 W.L.R. 672). A person who entered into a counter area on a sales floor of a department store was held to be a “trespasser” for the purposes of this section (*R. v. Walkington* [1979] 1 W.L.R. 1169).

TRIAL. (1) A “trial” is the conclusion, by a competent tribunal, of questions in issue in legal proceedings, whether civil or criminal. Therefore, the hearing of the reference of an action “and all matters in difference” is not a trial within Attendance of Witnesses Act 1854 (c. 34), s.1 (*Hall v. Brand* 12 Q.B.D. 39; but see *Munday v. Norton* [1892] 1 Q.B. 403, and *Patten v. West of England Iron Co.* [1894] 2 Q.B. 159, both cited *ARBITRATION*). But an indictment for non-repair of a highway was “tried” within s.95, Highway Act 1835 (c. 50), if the defendants pleaded guilty (*R. v. Haslemere* 32 L.J.M.C. 30). It was held that an assessment of damages by a jury on a judgment by default was not a trial within the old R.S.C., Ord. 65, r. 1 (*Gath v. Howarth* 28 S.J. 427). Such an assessment was a trial within s.1, Judicature Act 1890 (c. 44) (*Radam’s Microbe Killer v. Leather* [1892] 1 Q.B. 85).

(2) The trial (Criminal Justice Act 1948 (c. 58), s.23(1)) was not complete until sentence had been passed or the offender had been ordered to be discharged (*R. v. Grant* [1951] 1 K.B. 500).

(3) The hearing of a summons under s.10, Companies (Winding-up) Act 1890 (c. 63) (cp. Companies Act 1948 (c. 38), s.270), was not “the hearing or trial of an action upon notice,” so as to entitle a solicitor to the fee for instructions for brief, under the old R.S.C., App. N, Item 81 (*Re Anglo-Austrian Printing Union* [1894] 2 Ch. 622); but it was a matter within the old R.S.C., Ord. 65, r. 27 (*ibid.*). Such a summons if not a “trial of an action” was, *semble*, a “trial of an issue of fact,” within Item 81 (*Re Consolidated Exploration Co.* [1899] 2 Ch. 599), in which case the fee was allowed on a question upon a guarantee which was directed to be tried without even a summons being taken out.

(4) “Trials” in a marine insurance: see *Jackson v. Mumford* 20 T.L.R. 172.

(5) To constitute a “trial” within Common Law Procedure Act 1852 (c. 76), s.212 there must be an effective trial binding on all necessary parties, and an effective judgment binding on all necessary parties, so that where judgment for possession has been signed against one only of two joint tenants there has not been such a trial (*Gill v. Lewis* [1956] 2 Q.B. 1).

(6) “At the trial or hearing of the action, course or matter” Legal Aid (General) Regulations 1962 (No. 148), Reg. 18(1). These words refer to the final determination of the matter and do not cover preliminary applications (*Wozniak v. Wozniak* [1953] P. 179). The dismissal of an action for want of prosecution is not within the regulation (*Cope v. United Dairies (London) Ltd.* [1963] 2 W.L.R. 926).

(7) “The trial or first trial in any matrimonial proceedings” (Domicile and Matrimonial Proceedings Act 1973 (c. 45), Sched. 1, para. 9(1)) means the trial of issues

in the main suit, and would not relate to a hearing as to custody or ancillary relief (*Thyssen-Bornemisza v. Thyssen-Bornemisza* [1985] 1 All E.R. 328).

“Trial of an information” (Magistrates’ Courts Act 1952 (c. 55), s.104), see INFORMATION.

See COMMITTED FOR TRIAL; PREFERRED; SALE ON TRIAL; VERDICT; TRIED.

TRIBUNAL. (1) Referring to the rule, as to the immunity for words written or spoken by a witness in a court, laid down by the Exchequer Chamber in *Dawkins v. Rokeby* (L.R. 8 Q.B. 255, affirmed, L.R. 7 H.L. 744), Fry L.J. said, “I accept that, with this qualification that I do not like the word ‘tribunal.’ The word is ambiguous, because it has not, like ‘court,’ any ascertainable meaning in English law” (*Royal Aquarium v. Parkinson* [1892] 1 Q.B. 431, cited COURT).

(2) A bishop’s commission of inquiry, under s.77, Pluralities Act 1838 (c. 106), (as amended by s.3, Act of 1885 (c. 54)), is a judicial tribunal, and a witness therein is privileged from an action for slander in respect of the evidence given by him (*Barratt v. Kearns* [1905] 1 K.B. 504).

See COURT; JUDICIAL PROCEEDING.

TRIBUTARY. (1) A “tributary” to a river (Salmon Fishery Act 1873 (c. 71)—cp. Salmon and Freshwater Fisheries Act 1923 (c. 16), s.92(1)) is another stream which flows into it in an unimpounded course; and does not include a stream which would have been a tributary but for the fact that its waters are lawfully impounded and used by a water company, and only the surplus unused waters of which find their way into the old course of the stream (*Harbottle v. Terry* 10 Q.B.D. 131).

(2) In that case, Stephen J., in giving judgment said: “Is a pond fed by a stream, and running into a larger stream or river, to be called a ‘tributary’ of the larger stream? Ordinarily, one would say, no. Ordinarily, by ‘tributary,’ one means a stream running into another stream. It is not a very exact word, but it has a not very indefinite popular meaning. It is rather by instances that its meaning can be arrived at. I gave as an instance a stream dammed up into a series of pools, and running on through them from one to the other continuously, as being in my opinion a ‘tributary.’ And again, such a piece of water as Loch Neagh in Ireland, and another lake near Waterville in County Kerry. But take the Serpentine—it would be a strong thing to call it a ‘tributary’ of the Thames, and still more so to call the Round Pond one; yet some of their water finds its way into the Thames.”

(3) But a river flowing into a river which latter flows into another river, is a “tributary” of this last river (*Hall v. Reid* 10 Q.B.D. 134, n.), and so an unnamed stream which flows into a brook which flows into a river which flows into another river, is a “tributary” of this last river (*Evans v. Owen* [1895] 1 Q.B. 237).

(4) Observe that in *Harbottle v. Terry* (sup.) the water was impounded in order to be consumed; but running water merely diverted for a temporary purpose and all of which eventually returns to the river, is a “tributary” of the river, e.g. a mill-race, or a mill-dam which is part of a mill-race (*Moses v. Iggo* [1906] 1 K.B. 516). Cp. *Stead v. Nicholas* [1901] 2 K.B. 163, cited WATERS.

(5) Where the Secretary of State’s certificate defined the Severn Fishery District as “so much of the river Severn and of the rivers Vyrynw and Teme, and of all ‘other’ tributaries of the river Severn as are situate in the counties specified,” it was held that “other tributaries” meant direct tributaries, as the Vyrynw and Teme are (*Merricks v. Cadwallader* 51 L.J.M.C. 20). But this decision has been superseded by a certificate of September 20, 1882, which drops the phrase “other tributaries” and speaks of the Severn and its “tributaries”; thereby an unnamed stream which

flows into a brook which flows into a river which flows into the Severn, is a “tributary” of the Severn (*Evans v. Owen* sup.). The Vyrnwy reservoir which supplies Liverpool with water is not a tributary of the Severn (*George v. Carpenter* [1893] Q.B. 505).

TRICYCLE. See **LOCOMOTIVE.**

Stat. Def., Vehicles (Excise) Act 1971 (c. 10), Sched. 1, para. 3.

TRIED. “Proceedings tried in any court of record” (Law Reform (Miscellaneous Provisions) Act 1934 (c. 41), s.3(1)). There seemed to be some doubt as to whether proceedings in which judgment was given in default of pleading were “tried” (*Wallersteiner v. Moir* (No. 2) [1975] Q.B. 373). A case in which summary judgment is awarded under R.S.C., Ord. 14 has been “tried” in court and accordingly the court has power to award interest under this section (*Gardener Steel v. Sheffield Brothers (Profiles)* [1978] 1 W.L.R. 916). In that case Ormrod J. held that “‘tried’ must mean ‘determined,’ ” and this interpretation was followed in *Alex Lawrie Factors v. Modern Injection Moulds* ([1981] 3 All E.R. 658) where it was held that section 3 covered any proceedings in a court of record that had been started by a writ or other originating process and ended in judgment—irrespective of how the judgment had been arrived at. So that where a final judgment had been obtained in default of appearance to a writ the court had jurisdiction to award interest under this section.

TRIFLING. (1) Offence “of so trifling a nature” that punishment is inexpedient (s.16, Summary Jurisdiction Act 1879 (c. 49)): see *Phillips v. Evans* [1896] 1 Q.B. 305.

(2) For an incoming tenant to keep open a public-house for (say) 9 days without being licensed is not an offence of a “trifling” nature, even though there were no transfer day during that period and such tenant had a bona fide intention to apply for a transfer as soon as possible (*Barnard v. Barton* [1906] 1 K.B. 357). Non-vaccination of a child is not a “trifling” offence, even though the parent has repeatedly tried, but without success, to get a certificate of his conscientious belief that vaccination would be prejudicial to the child’s health (*Nisbet v. Lloyd* 68 J.P. 396).

(3) A previous conviction does not alter the character of a “trifling” offence; “if the magistrate should consider that after seven, eight, or even ten, previous convictions, the offence was still a ‘trifling’ one, it would be quite within his power to do so” (*per Darling J., Vinters v. Freedman* 71 L.J.K.B. 48).

Cp. **TRIVIAL**; **VENIAL**.

TRINITY HOUSE. Merchant Shipping Act 1894 (c. 60), s.742, “‘The Trinity House’ shall mean the master, wardens, and assistants of the guild fraternity or brotherhood of the Most Glorious and Undivided Trinity and of St. Clement, in the parish of Deptford Strond, in the county of Kent, commonly called ‘The Corporation of the Trinity House of Deptford Strond.’ ” See also s.3, Thames Conservancy Act 1894 (c. clxxxvii).

See **CINQUE PORTS**.

TRINITY HOUSE OUTPORT DISTRICTS. Under the Merchant Shipping Acts, “The Trinity House outport districts” comprises “any pilotage district for the appointment of pilots within which no particular provision is made by any Act of Parliament, or charter” (s.370(3), Merchant Shipping Act 1854 (c. 104)—cp. Pilot-

age Act 1913 (c. 31), s.52). Ipswich is within that definition (*Hadgraft v. Hewitt* L.R. 10 Q.B. 350). See PARTICULAR PROVISION.

See hereon *The Winestead* [1895] P. 170, and *The Glanystwyth* [1899] P. 118, both cited COASTING TRADE.

TRINKETS. “Trinkets” are small articles for personal adornment, or wear, or even use when its object is essentially ornamental. Ivory bracelets, ornamental shirt pins, gilt rings, brooches, tortoiseshell and pearl portmonnaies, and scent-bottles were “trinkets” within s.1, Carriers Act 1830 (c. 68), but a plain German-silver fusee box was not (*Bernstein v. Baxendale* 28 L.J.C.P. 265). So, ivory fans were included in a bequest of “trinkets” (*A.-G. v. Harley* 7 L.J.O.S. Ch. 31).

See PERSONAL ORNAMENTS.

TRIPTYCH. See *St. John, Pendlebury* [1895] P. 178.

TROLLEY VEHICLE. Stat. Def., Road Traffic Regulation Act 1967 (c. 76), s.104; Road Traffic Act 1972 (c. 20), s.196; New Towns Act 1981 (c. 64), s.80; Road Traffic Regulation Act 1984 (c. 27), s.141.

TRONAGE. “The King’s duty for the weighing of wooll at the King’s beam, in all ports wherein woolls were exported” (Hale, *De Portibus Maris*, ch. 6). See further *Webb’s Case* 8 Rep. 46 b.

Cp. PESAGE.

TRONC. The “tronc” system is one under which the tips given by customers at a restaurant to the waiters are pooled and shared out between them; such sums cannot be taken into account in computing the amounts which the restaurant proprietors should pay the waiters under the Catering Wages Act 1943 (c. 24), s.9(2) (*Wrottesley v. Regent Street Florida Restaurant* [1951] 2 K.B. 277).

TROUBLE. (1) The “trouble” of an executorship does not cease by the mere institution of an administration action; nor, accordingly, an annuity given to an executor for his trouble in superintending testator’s affairs (*Baker v. Martin* 8 Sim. 25).

(2) A sum or annuity bequeathed to an executor “for his trouble,” is a legacy liable to duty (*Thorley v. Massam* [1891] 2 Ch. 613, cited GIFT).

“Disturb, vex, or trouble”: see DISTURB.

TROUT. Stat. Def., Salmon and Freshwater Fisheries Act 1975 (c. 51), s.41.

TROVE. See TREASURE TROVE.

TROVER. (1) The action of trover (now frequently called an action for conversion of goods), is one of that genus of actions that were formerly called actions on the CASE. It lies where the defendant has converted or appropriated the plaintiff’s goods to his (the defendant’s) use, or has otherwise wrongfully deprived the plaintiff of their use and possession.

(2) As to what is such a conversion, see *Hollins v. Fowler* L.R. 7 H.L. 757; *Consolidated Co. v. Curtis* [1892] 1 Q.B. 495. See hereon *Cooper v. Chitty* 1 Bl. W. 65; *Gordon v. Harper* 7 T.R. 9; *Termes de la Ley*; Jacob; 3 Bl. Com. 152, 153; Rosc. N.P. (20th ed.) 954. Cp. DETINUE.

(3) “A man is guilty of a conversion who takes my property by assignment from

another who has no authority to dispose of it; for what is that but assisting that other in carrying his wrongful act into effect?" (*per* Ellenborough C.J., *M'Combie v. Davies* 6 East 540); so, of bankers who take a cheque, or such like instrument, from a person who has no title to it (*Fine Art Society v. Union Bank* 17 Q.B.D. 705; but see PAYMENT). See also *Clayton v. Le Roy* [1911] 2 K.B. 1031, cited MARKET OVERT; Larceny Act 1916 (6 & 7 Geo. 5, c. 50), s.20.

(4) As used in s.3, Limitation Act 1623 (c. 16), the claim for "trover" began to run from the conversion, not from its discovery (*Granger v. George* 5 B. & C. 149). Cp. Limitation Act 1939 (c. 21), s.3. See further CAUSE OF ACTION.

(5) Interest, beyond damages, could be given in "all actions of trover, or trespass *de bonis asportatis*" (s.29, Civil Procedure Act 1833 (c. 42); see *Phillips v. Homfray* [1892] 1 Ch. 465. Cp. DEMAND.

(6) A successful plaintiff in trover remains, after judgment, the owner of the goods for all purposes unless and until judgment is fully satisfied (*Ellis v. John Stenning & Son* [1932] 2 Ch. 81).

TROY. "In every pound weight troy" (Gold Plate (Standard) Act 1798 (c. 69), s.6): see *Westwood v. Cann* [1952] 2 Q.B. 887.

TRUCK ACT. Truck Act 1831 (c. 37); amended by Truck Amendment Acts 1887 (c. 46), and 1896 (c. 44).

See AGREEMENT; ARTIFICER; BUTTY COLLIER; CONTRACT TO SUPPLY; MATERIALS; MEDICINE; PAYMENT. See further DEDUCTION; *M'Lucas v. Campbell* 30 Sc. L.R. 226, cited PAYMENT; WAGES.

TRUCK-MASTER. To write of a man that he is a "truckmaster" is a libel (*Homer v. Taunton* 29 L.J. Ex. 318); in giving the judgment, Pollock C.B., said the word was not then to be found in any English dictionary.

TRUE. (1) When a contract—*e.g.* a life policy—proceeds on the basis that statements made by the party to be benefited thereunder are "true," it will be avoided if any material statement is untrue in fact, even though it be made in good faith and be not untrue to the knowledge of the party making it (*Macdonald v. Law Union Insurance* L.R. 9 Q.B. 328). See CORRECT; UNTRUE. But see *Hemmings v. Sceptre Life Assurance* [1905] 1 Ch. 365.

(2) "True and correct statement of income" (s.107, Income Tax Act 1918 (c. 40)): see *A.-G. v. Till* [1910] A.C. 50, cited DELIVER.

(3) "True and correct view of the state of the company's affairs" (s.134, Companies Act 1929 (c. 23)), *i.e.* "the purpose of the balance sheet is primarily to show that the financial position of the company is at least as good as there stated; not to show that it is not, or may not be better. . . . The auditor's duty is to call attention to that which is wrong, not to condescend upon all the details of that which is right" (*per* Buckley J., *Newton v. Birmingham Small Arms Co.* [1906] 2 Ch. 378, cited AUDIT; *Re City Equitable Fire Insurance Co.* [1925] Ch. 407). See Companies Act 1948 (c. 38), 9th Sched., para. 4.

TRUE AND ANCIENT RENT. See *Mountjoy's Case* 5 Rep. 3 b; cited Sug. Pow. (8th ed.) 730.

TRUE BILL. (1) "'*Billa vera*' is a term of art" indorsed by the grand jury on an indictment; and signifies "that the presentor hath furnished his presentment with

probable evidence and worthy of farther consideration; And thereupon the party presented is said to stand indicted of the crime, and so bound to make answer unto it, either by confessing or traversing the indictment” (Cowel, *Billa Vera*). See further 4 Bl. Com. 305, 306.

(2) The antithesis is “*ignoramus*,” “a word properly used by the Grand Inquest . . . and written upon the bill when they mislike the evidence as defective, or too weak, to make good the presentment; the effect of which word so written is that all farther enquiry upon that party for that fault is thereby stopped, and he delivered without further answer” (Cowel). The phrase now generally used is “not a true bill.”

TRUE COPY. (1) A “true copy” does not mean an absolutely exact copy; but it means that the copy shall be so true that nobody can by any possibility misunderstand it (*per* Bacon C.J., *Re Hewer* 21 Ch. D. 871). In that case a bill of sale was held well registered, though there was a clerical error in the registered copy of it (see also *Sharp v. McHenry* 38 Ch. D. 428; *Tuck v. Southern Counties Deposit Bank* 42 Ch. D. 471); so, though the date be omitted in the copy if the omission be supplied by the affidavit (*Thomas v. Roberts* [1898] 1 Q.B. 657); so of the omission of the name of the grantor of the bill of sale and of the name and address of the attesting witness, if such omissions be supplied by the affidavit (*Coates v. Moore* [1903] 2 K.B. 140). The test whether the copy is a “true” one is whether any variation from the original is calculated to mislead an ordinary person; see *Burchill v. Thompson* [1920] 2 K.B. 80, where it was held, on appeal, that the omission of the words “per annum” after the statement of the rate of interest to be paid, prevents the copy from being a true copy. See also *Commercial Credit Co. v. Fulton Bros.* 93 L.J.P.C. 12. But a served copy of an order of court is not a true one, for the purpose of attachment for disobedience, if the title of the cause or matter be omitted (*Re Holt* 11 Ch. D. 168).

(2) As to “true copy” of a trader-debtor summons under Bankruptcy Act 1849 (c. 106), see *Re Tindall* 24 L.J. Bank. 18.

See COPY. Cp. TRANSLATION.

TRUE FAITH. As to the old abjuration oath “upon the true faith of a Christian,” see *Miller v. Salomons* 7 Ex. 475; 8 *ibid.* 778.

TRUE NAME. (Marriage Act 1823 (c. 76), s.7—see Marriage Act 1949 (c. 76), s.8.) Publication of banns in the name by which one party was known even though it was not her proper surname was held to be publication in her “true name” (*Dancer v. Dancer* [1949] P. 147).

TRUE OWNER. (1) This expression “has a technical meaning in bankruptcy, and means a person who has acquired (by mortgage, purchase, or otherwise) the beneficial interest in personal chattels as distinguished from the vendor, mortgagor, or grantor, who is allowed to retain possession of them, and is by means of such possession the reputed or apparent owner” (Robson, 860, n. (y)). See hereon *ibid.*, 519 *et seq.*; CONSENT; POSSESSION ORDER OR DISPOSITION. *Re Ginger* [1897] 2 Q.B. 461, cited CONSENT, was followed in *Re Weibking* [1902] 1 K.B. 713. See further POSSESSION, ORDER OR DISPOSITION; *Hollinshead v. Egan* [1913] A.C. 564.

(2) As to whether the phrase “true owner” in the reputed ownership clause includes a bare trustee, see Lewin (15th ed.) 410, 411; *Re Mills* [1895] 2 Ch. 564.

(3) An unregistered “absolute” bill of sale of chattels will prevent its giver from

being the "true owner" of the chattels (s.5, Bills of Sale Act (1878) Amendment Act 1882 (c. 43); and a subsequent registered bill of sale of the same chattels will thereby be defeated (*Tuck v. Southern Counties Deposit Bank* 42 Ch. D. 471). But in an unreported case, decided before the lastly cited case, Pollock B., held that the grantor of a bill of sale, "given by way of mortgage," remained the "true owner" of the goods comprised therein, so long as he remained in possession of such goods; and that, therefore, a second bill of sale registered before a prior one, took precedence of that prior one under s.10, Bills of Sale Act 1878 (c. 31) (*Price v. Russell* April 12, 1889).

(4) A grantor of a bill of sale by way of mortgage, remains the true owner of the goods as regards the equity of redemption (*Thomas v. Searles* [1891] 2 Q.B. 408); on the other hand, the true owner includes the legal owner of the chattels, whether he be also the beneficial owner or only a trustee (*Ex p. Williams, Re Sarl* [1892] 2 Q.B. 591).

(5) In *Re Keen* [1902] 1 K.B. 555 (cited BILL OF SALE) a building owner was held not the "true owner" of the builder's plant and materials that had been brought on to the building site, because the language of the building agreement did not pass that ownership as did the language in *Reeves v. Barlow* 12 Q.B.D. 436 (cited BILL OF SALE); as to *Re Keen*, see *Hart v. Porthgain Harbour Co.* [1903] 1 Ch. 690. See further RIGHT IN EQUITY. See also *Lewis & Sons v. Thomas* [1919] 1 K.B. 319, where it was held that the bailee of goods comprised under a hiring agreement which gave an option of purchase was not the true owner within the meaning of s.5, Bills of Sale Act (1878) Amendment Act 1882 (c. 43). See *Harrods Ltd. v. Stanton* [1923] 1 K.B. 516; *Gordon v. Goldstein* [1924] 2 K.B. 779.

(6) A partner in, or other joint owner of, goods is the "true owner" of "his share" in the goods within s.5, Bills of Sale Act (1878) Amendment Act 1882 (c. 43) (*Re Tamplin, Ex p. Barnett* 59 L.J.Q.B. 194).

(7) "True owner" (Bills of Exchange Act 1882 (c. 61), s.82). Where a farm subsidy warrant was made payable to the farm manager but endorsed "for" the farm owner, it was the farm owner who was the "true owner" of the warrant (*Bute (Marquess) v. Barclays Bank* [1955] 1 Q.B. 202).

TRULY SET FORTH. (1) The Bills of Sale Act 1878 (c. 31), s.8, requires the consideration of a bill of sale to be "set forth" therein, and s.8, Bills of Sale Act 1882 (c. 43) requires the consideration to be "'truly' set forth." The adverb here does not add to the sense (*per Smith J., Staniforth v. Capon* 2 T.L.R. 493).

(2) Under either Act, the requirement is that the consideration (but not the sum secured, *Ex p. Chillinor, Re Rogers* 16 Ch. D. 260), shall truly and fairly, according to the ordinary dealings of honest men, appear on the face of the document (*Roberts v. Roberts* 13 Q.B.D. 794; see further *per Rigby L.J., Darlow v. Bland* [1897] 1 Q.B. 125).

(3) Thus, moneys really paid at the request of the grantor to satisfy a debt, due from the grantor, may be stated to have been paid to him (*Ex p. National Mercantile Bank, Re Haynes* 15 Ch. D. 42; *Ex p. Challinor* sup.; *Hamlyn v. Betteley* 5 C.P.D. 327; *Ex p. Bolland, Re Roger* 21 Ch. D. 543; see also *Carrard v. Meek* 50 L.J.Q.B. 187; *Staniforth v. Capon* sup.); but, to bring a case within the doctrine of those decisions, the debt so paid must be absolute, prior to the execution of the bill of sale; therefore, a deduction in respect of a mere inchoate liability as, e.g. for mortgagee's expenses in relation to the security (*Ex p. Firth, Re Cowburn* 19 Ch. D. 419; *Hamilton v. Chainé* 7 Q.B.D. 319; *Ex p. Charing Cross Bank, Re Parker* 16 Ch. D. 35; *Richardson v. Harris* 22 Q.B.D. 268. But see *Re Cann, Ex p. Hunt* 13

Q.B.D. 36), or for commission on the loan (*Hamilton v. Chainé* sup.), or for prospective interest (*Ex p. Charing Cross Bank, Re Parker* sup.), or for an agreement to make a future payment (*Ex p. Rolph, Re Spindler* 19 Ch. D. 98), or a liability on an immature acceptance held by the grantee of the bill of sale (*Richardson v. Harris* sup.; *semble*, otherwise if applied in payment of the grantee's immature liability to a third party, *Re Wiltshire* [1900] 1 Q.B. 96, cited Now), cannot be regarded as money paid to the grantor, and if such statement be the only reference to such a deduction the consideration will not be either "truly set forth" or "set forth." But, on the other hand, if the debt be absolute before the execution of the bill of sale, then, though it be due to the grantee himself, it will be properly stated as money paid to the grantor, for an allowance to him in account is equivalent to payment (*Credit Co. v. Pott* 6 Q.B.D. 295; *Ex p. Johnson, Re Chapman* 26 Ch. D. 338; *Ex p. Nelson* 55 L.T. 819); *a fortiori* if the whole of the new advance be actually made, although made on the understanding (duly carried out) that the old debt to the grantee shall be paid within a very short time (*Thomas v. Searles* [1891] 2 Q.B. 408, cited TRUE OWNER).

(4) A bill of sale, given in substitution for a prior defective one, and which contained no reference to that prior document, but stated the pecuniary consideration as "now paid," was held to truly set forth the consideration (*Ex p. Allam, Re Munday* 14 Q.B.D. 43; see also *Re Davies* 77 L.T. 567; but see *Ex p. Berwick* 29 W.R. 292). As to "now paid" and "now due," see further Now.

(5) Where a bill of sale was prepared by the grantor's solicitor, and the consideration was a truly stated antecedent debt which the grantor was unable to pay and "in order to induce the grantee not to institute proceedings" the grantor had agreed to make the bill of sale; held, that the consideration was truly set forth, although the grantee had not threatened proceedings (*Ex p. Winter* 25 S.J. 333).

(6) The consideration must be truly set forth in the bill of sale itself; and an incorrect or imperfect statement of it there cannot be rectified by reference to a receipt endorsed on it (*Ex p. Charing Cross Bank, Re Parker* sup.).

(7) Though s.8, Bills of Sale Act 1878 (c. 31), uses the phrase "set forth" the consideration, s.10(3) requires a defeasance to be "truly set forth."

See PAID; PAYMENT.

TRUNK ROAD. Stat. Def., Highways Act 1980 (c. 66), s.329.

TRUST. (1) "No definition of a 'trust' seems to have been accepted as comprehensive and exact. Strictly, it refers, I think, to the duty or the aggregate accumulation of obligations that rest upon a person described as a trustee. The responsibilities are in relation to property held by him, or under his control. That property he will be compelled by a court in its equitable jurisdiction to administer in the manner lawfully prescribed by the trust instrument, or where there be no specific provision written or oral, or to the extent that such provision is invalid or lacking, in accordance with equitable principles" (*per* Mayo J., in *Re Scott* [1948] S.A.S.R. 193, 196).

(2) "Trust" (ss.7, 8, Statute of Frauds) includes a "use" (*Bushell v. Burland* Holt 733); but a mere agency to buy property is not a "trust" or "confidence," within those sections (*Cave v. Mackenzie* 46 L.J. Ch. 564). See MANIFESTED.

(3) Where realty is devised "upon trust," or "in trust," and there are no active duties to perform, "the term 'trust' would be read, not in its modern sense, but in the old sense in which it was understood before and in the Statute of Uses (27 Hen. 8, c. 10), which admitted of no difference between 'uses' and 'trusts' " (*per* Chitty J., *Re Brooke* [1894] 1 Ch. 43, cited LEGAL ESTATE). See USE.

(4) The word “trust” is not necessary to create a trust, nor will its use necessarily create one (2 Jarm. (8th ed.) 866; *Te Teira v. Te Roera Tareha* [1902] A.C. 64); but its use is frequently most useful in showing that a trust is intended (*per* Chitty L.J., *Hill v. Hill* 66 L.J.Q.B. 335).

(5) “As the doctrines of trust are equally applicable to real and personal estate, and the principles that govern the one will be found, *mutatis mutandis*, to govern the other, we cannot better describe the nature of a trust, generally, than by adopting Lord Coke’s definition of a ‘use,’ the term by which, before the Statute of Uses, a trust of lands was designated. A trust, in the words applied to the use, may be said to be: ‘A confidence reposed in some other, which is not issuing out of the land, but as a thing collaterall, annexed in privity to the estate of the land, and to the person touching the land’ (Co. Litt. 272 b)” ; Lewin (15th ed.), 11.

(6) Trustee Act 1925 (c. 19), s.68(17), “ ‘trust’ does not include the duties incident to an estate conveyed by way of mortgage, but with this exception the expressions ‘trust’ and ‘trustee’ extend to implied and constructive trusts, and to cases where the trustee has a beneficial interest in the trust property, and to the duties incident to the office of a personal representative. That definition (taken in great part from s.2, Trustee Act 1850 (c. 60) and s.50, Trustee Act 1893 (c. 53)) includes a mortgagor (owned of the fee simple) who has given a declaration to his equitable mortgagee that he will hold all his estate in trust for the mortgagee; and if it be added that the mortgagee may remove the mortgagor from the trust and appoint new trustees, the mortgagee in doing so might, by s.12(1), Trustee Act 1893 (sup.)—see now Trustee Act 1925 (sup.), s.40—divest the legal estate the mortgagor had at the time of the mortgage out of the mortgagor and vest it in his (the mortgagee’s) nominee as against a subsequent legal mortgagee (*London & County Bank v. Goddard* [1897] 1 Ch. 642); “any trust” in that section was not to be limited to substantial trusts (*ibid.*).

(7) Judicial Trustees Act 1896 (c. 35), s.1(2), “the administration of the property of a deceased person (whether a testator or intestate) shall be a trust, and the executor or administrator a trustee.” “Therefore, clearly s.3 (which gives the court power to relieve for breach of trust) applies to the case of an executor who has been guilty of a devastavit” (*per* Romer J., *Re Kay* [1897] 2 Ch. 518); see further REASONABLY.

(8) Settled Land Act trustees are trustees of a trust; an appointment of a judicial trustee for the purposes of the Settled Land Act 1925 (c. 18), is therefore competent (*Re Marshall’s Will Trusts* [1945] Ch. 217).

(9) “Trusts” (Income Tax Act 1918 (c. 40), s.37), embraced trusts under the Scottish and English systems of law (*Camille & Henry Dreyfus Foundation Inc. v. I.R.C.* [1956] A.C. 39).

(10) As to policies, whether held on trust, see BENEFIT. As to bequests “on condition,” “charged with,” etc., whether subject to trust, charge or personal obligation, see *Re Lester* [1942] Ch. 324; *Re Frame* [1939] Ch. 700; *Re Darby* [1939] Ch. 905.

(11) The words “in trust” in a policy of insurance indemnifying the insured against loss of or damage to goods belonging to or held “in trust” by the insured mean “entrusted to” the insured, whether he has come into physical possession of them or not (*Rigby (John) (Haulage) v. Reliance Marine Insurance Co.* [1956] 2 Q.B. 468).

(12) There is no inherent relationship of trust or agency between co-owners (*Kennedy v. De Trafford* [1897] A.C. 180).

“Declaration of trust”: see DECLARATION.

“Like trusts”: see LIKE.

Stat. Def., Settled Land Act 1925 (c. 18), s.117; Trustee Act 1925 (c. 19), s.68; Charities Act 1960 (c. 58), s.46; Finance Act 1968 (c. 44), Sched. 15, para. 13; Solicitors Act 1974 (c. 47), s.87.

See BREACH OF TRUST; CHARITABLE PURPOSE; COMMISSION; CONSTRUCTIVE; DISTINCT; EXECUTED; EXPRESS; IN TRUST; INTRUSTED; NOTICE; PARTICULAR TRUST; PRECATORY TRUST; RESULTING TRUST; SECRET TRUST; SIMPLE TRUST; TRUSTEE; TRUST FOR SALE; UPON TRUST.

TRUST CORPORATION. Stat. Def., Supreme Court Act 1981 (c. 54), s.128; Finance Act 1982 (c. 39), s.94; Capital Transfer Tax Act 1984 (c. 51), Sched. 4.

TRUST ESTATE. A substitutional gift of “my trust estate,” held to include the corpus of past accumulations (*Re Travis* [1900] 2 Ch. 541).

TRUST FUNDS. (1) “Trust funds,” in its ordinary acceptation and as used in s.3, Trust Investment Act 1889 (c. 32)—see Trustee Investments Act 1961 (c. 62), s.1—is not confined in its meaning to cash awaiting investment but “signifies funds belonging to the trust, including money invested on security or otherwise as well as uninvested cash” (*per* Lord Watson, *Hume v. Lopes* [1892] A.C. 112); therefore, the power to vary extends to all investments whether made under the Act or not (*ibid.*).

(2) “Trust funds . . . in a state of investment” (Trustee Act 1925 (c. 19), s.1(1)) included investments specifically settled by a will containing no express power of sale. The trustees accordingly had power to sell such investments and reinvest in any authorised security (*Re Pratt’s Will Trusts* [1943] Ch. 326).

See FUNDS.

TRUST INSTRUMENT. (Settled Land Act 1925 (c. 18), s.36(1).) Settled land may be held on trust for persons entitled in undivided shares under a trust instrument although the trust instrument itself does not cause the division, but the division into shares is effected by a subsequent deed or event (*Re Hind, Bernstone v. Montgomery* [1933] Ch. 208).

TRUST PROPERTY. (Trustee Act 1925 (c. 19), s.57.) “Trust property” cannot include the equitable interests which a settlor has created in that property (*Re Downshire Settled Estates* [1953] Ch. 218).

See PROPERTY.

TRUSTEE. (1) A trustee is one who holds the “ownership or possession of, or dominion over, the subject of the trust, but is bound to allow the beneficial enjoyment or usufruct of that subject to be reaped by another who is called the *cestui que trust*, or beneficiary” (Godefrois (2nd ed.) 2). See further TRUST.

(2) As to who may be a trustee, see Lewin (15th ed.), 24 *et seq.*; *Re Stamford* [1896] 1 Ch. 288.

(3) “Undoubtedly corporations may be trustees” (*per* Swinfen Eady J., *Re Thompson* [1905] 1 Ch. 231; see further *National Trustees Co. of Australia v. General Finance Co. of Australia* [1905] A.C. 73, cited REASONABLY). See Trustee Act 1925 (c. 19), s.41.

(4) Retiring trustees should not appoint the Public Trustee in their place if there is some other and proper way out of the difficulty: see *Re Hope-Johnstone* 53 S.J. 321.

(5) An executor, or even an administrator with the will annexed, could have been a trustee for an infant, within s.43, Conveyancing Act 1881 (c. 41) (*Re Adams* 51 S.J. 113). An executor of a surviving trustee was the trustee of such a trust: see *Re Waidanis* [1908] 1 Ch. 123, cited ASSIGNS. See Trustee Act 1925 (c. 19), s.31.

(6) An administrator who has cleared an intestate's estate ceases to be an administrator and becomes a trustee, and the court can appoint a new trustee to act jointly with him: see *Re Ponder* [1921] 2 Ch. 59.

(7) As to when a claim is not, or ceases to be, for a "legacy" against a person as executor (for which the period of limitation is 12 years, s.8, Real Property Limitation Act 1874 (c. 57)—see Limitation Act 1939 (c. 21), s.18(1))—and is, or has become, one against him as "trustee" (for which the period is 6 years, s.8, Trustee Act 1888 (c. 59)—see Limitation Act 1939 (sup.), s.19), see *Re Swain* [1891] 3 Ch. 233, cited BREACH OF TRUST; *Re Timmis* [1902] 1 Ch. 176. See further EXECUTOR; *Re Oliver* [1927] 2 Ch. 323.

(8) As to what fiduciary position will constitute a person a trustee as regards the Statutes of Limitation, see *Burdick v. Garrick* 5 Ch. 233, and cases there cited; *North American Land Co. v. Watkins* [1904] 1 Ch. 242; [1904] 2 Ch. 233, and cases there cited.

(9) Where a testator directed his debts "to be paid by my executors hereinafter named," but appointed no executors and did appoint "trustees," held that probate should be granted to these "trustees" as executors (*Re Kirby* [1902] P. 188).

(10) As to the estate taken by trustees in view of the phrases that may be employed in the instrument creating the trust: see LEGAL ESTATE.

(11) "Every power given to trustees which enables them to deal with, or affect, the trust property, is prima facie given them *ex officio* as an incident of their office, and passes with the office to the holders or holder thereof for the time being. Whether a power is so given *ex officio* or not, depends in each case on the construction of the document giving it; but the mere fact that the power is one requiring the exercise of a very wide personal discretion, is not enough to exclude the prima facie presumption; and little regard is now paid to such minute differences as those between 'my trustees,' 'my trustees, A and B,' and 'A and B my trustees.' The testator's reliance on the individuals, to the exclusion of the holders of the office for the time being, must be expressed in clear and apt language" (*per* Farwell J., *Re Smith, Eastick v. Smith* [1904] 1 Ch. 144, citing Bowen L.J., in *Crawford v. Forshaw* [1891] 2 Ch. 267, and *Byam v. Byam* 24 L.J. Ch. 209, and dissenting from *Cole v. Wade* 16 Ves. 27, 44; see further EXECUTOR).

(12) As to gifts to, and purchases by, a trustee, see UNDUE INFLUENCE. One who has been, but has fairly and entirely ceased to be, a trustee, may be a purchaser of the trust property (*Re Boles and British Land Co.* [1902] 1 Ch. 244).

(13) As to remuneration to a trustee for services rendered in some sense in relation to the trust, but not paid for by its funds, see *Re Dover Coalfield Extension Ltd.* [1908] 1 Ch. 65; *Re Lewis* 55 S.J. 29; *Re Sykes* [1909] 2 Ch. 241; *Bath v. Standard Land Co.* [1911] 1 Ch. 618. As to remuneration to trustees of a debenture trust deed, see *Re Picadilly Hotel Ltd.* 56 S.J. 62; *Re British Consolidated Oil Corporation* [1919] 2 Ch. 81.

(14) "Trustee" (Trustee Act 1888 (c. 59), s.1—see Trustee Act 1925 (c. 19), s.68(17))—included a director of a company who, as such, was entitled to the protective limitation given by s.8 (*Re Lands Allotment Co.* [1894] 1 Ch. 616), for "though directors are not trustees from the mere fact of being directors, yet they have always been considered and treated as trustees of money which comes to their hands or which is actually under their control" (*per* Lindley L.J., *ibid.*: see hereon

Young v. Naval & Military Co-operative Society of South Africa [1905] 1 K.B. 687; *Re Frances* 74 L.J. Ch. 198; and *Re Macfadyen* [1908] 2 K.B. 817, all cited DIRECTOR); but s.8 was not available to a trustee in bankruptcy (*Re Cornish* [1896] 1 Q.B. 99). See further *Gardner v. Cowles* 3 Ch. D. 304; *Re Findlay* 32 Ch. D. 221, 641; see also *Percival v. Wright* [1902] 2 Ch. 421. See also BREACH OF TRUST.

(15) "Trustee (The Trust Investment Act 1889 (c. 32), s.9), included the trustees of a charity, but not the trustees of a building society, the latter being rather agents for carrying on the business of the society (*Manchester Infirmary v. A.-G.* 43 Ch. D. 420, 431; *Re National Permanent Building Society* 43 Ch. D. 431).

(16) "Trustee or other person," in s.44, Trustee Act 1893 (c. 53): see *Re Wicksteed's Trusts* [1921] 2 Ch. 184, considered and not approved in *Re Chaplin's Contract* [1922] 2 Ch. 824.

(17) A mortgagee having surplus sales moneys in hand is a trustee of them within the Trustee Acts (*Robertson v. Norris* 30 L.T.O.S. 253; but see *Nash v. Eads* 25 S.J. 95; see further *Belton v. Bass, Ratcliffe & Gretton* [1922] 2 Ch. 449; *Roberts v. Ball* 24 L.J. Ch. 471; *Re Hardley* 10 Ch. D. 664; *Re Walhampton* 26 Ch. D. 391).

(18) A vendor who has covenanted to surrender copyholds is a "trustee" within the Trustee Acts (*Re Cuming* 5 Ch. 72; *Re Powis* 29 S.J. 373); see further especially on s.26(vi), Trustee Act 1893 (56 & 57 Vict., c. 53)—see Trustee Act 1925 (c. 19), s.44(vi); *Re Colling* 32 Ch. D. 333; *Re Pagani* [1892] 1 Ch. 236; *Re Lowry* L.R. 15 Eq. 78; and *Re Beaufort* [1898] W.N. 148. See now definition of "trustee" and "new trustee" in Trustee Act 1925 (c. 19), s.68. In s.25 of that Act, trustee "includes a tenant for life and a statutory owner."

(19) A voluntary liquidator of a company is not a trustee within the meaning of s.68(17), Trustee Act 1925, sup., and is therefore not entitled to the indemnity given to trustees by s.30: see *Re Windsor Steam Coal Co. Ltd.* [1928] 1 Ch. 609; affirmed, 98 L.J. Ch. 147.

(20) The probate judge is not by virtue of s.9 of the Administration of Estates Act 1925 (c. 23) a "trustee" within the meaning of the Trustee Act 1925 (c. 19) (*Re Deans, Westminster Bank v. Official Solicitor* [1954] 1 W.L.R. 332).

(21) Bankruptcy Act 1883 (c. 52), s.168—see Bankruptcy Act 1914 (c. 59), s.167—" 'trustee' means the trustee in bankruptcy of a debtor's estate"; therefore, the powers given to a "trustee" by s.27 (Act of 1914 (sup.), s.25) are not applicable to the trustee of an arrangement under s.18 (Act of 1914 (sup.), s.16) (*Re Grant* 17 Q.B.D. 238). "Trustee" as used in s.162(2) (Act of 1914 (sup.), s.153(2)): see *Re Chudley* 14 Q.B.D. 405; *Re Cornish* [1896] 1 Q.B. 99.

(22) A trustee in bankruptcy is not an assignee for value and cannot by prior notice gain priority over an equitable assignee (*Re Wallis* [1902] 1 K.B. 719). See *Re Cohen* [1905] 2 K.B. 704, cited APPOINTMENT.

(23) "The trustee," under r. 120, Bankruptcy Rules 1886 and 1890—see Bankruptcy Rules 1952 (No. 2113), r. 111—held to be the person who is trustee when the taxation takes place: see *Re Smith* [1910] 2 K.B. 346.

(24) Trustee (Larceny Act 1861 (c. 96), s.1) included a secretary to a savings bank (*R. v. Fletcher* 31 L.J.M.C. 206).

(25) "Trustees" for executing an Act for paving, etc., s.2, Municipal Corporations Act 1857 (c. 50): see *Swinford v. Keble* L.R. 1 Q.B. 549.

(26) "Trustees for sale" (Law of Property Act 1925 (c. 20), s.28) do not include trustees who have held but no longer hold land on trust for sale (*Re Wakeman, National Provincial Bank v. Wakeman* [1945] Ch. 177). See also Law of Property Act 1925 (sup.), s.205; Land Registration Act 1925 (c. 21), s.3; Settled Land Act 1925 (c. 18), s.117; Trustee Act 1925 (c. 19), s.68.

(27) A trustee *de son tort* is one who acquires the possession of or dominion over trust property, or to whom such property comes and who chooses to take upon himself the business of a trustee in relation to such property; he cannot, for his own benefit, say that he had no right to act as a trustee (*Rackham v. Siddall* 16 Sim. 297), and his liability is the same as a trustee regularly appointed (*ibid.*; *Pearce v. Pearce* 25 L.J. Ch. 893; *Hennessy v. Bray* 33 Bea. 96, 102).

(28) "Trustees with 'future' power of sale," who (by s.30, Settled Land Act 1925, sup.) are "trustees of the settlement" under the Settled Land Acts, include persons who are trustees of a settlement which contains such a future power, although some or one of them are persons who probably will not, or in fact cannot, ever exercise the power, e.g. a tenant for life, although the power of sale will not arise till after his death (*Re Jackson* [1902] 1 Ch. 258). See further *Re Davies and Kent* [1910] 2 Ch. 35, applying *Re Bowles* [1905] 1 Ch. 371.

(29) "The mere fact that persons are trustees for the purposes of the Settled Land Acts and therefore are 'trustees of the settlement' under Sched. II, para. 3, Settled Land Act 1925, sup., does not make them 'trustees with power of sale' within s.42, Conveyancing Act 1881 (c. 41)" (see Settled Land Act 1925 (c. 18), s.102); the power of sale is in the tenant for life, and when he is an infant, it may, under Sched. II, para. 3, be exercised "on his behalf," by the trustees of the settlement (*per Joyce J.*, *Re Helyar* [1902] 1 Ch. 391).

(30) "Trustees of the settlement," under settled Land Acts. Stat. Def., Settled Land Act 1882 (c. 38), s.2(8), enlarged by Settled Land Act 1890, s.16; adopted for and by s.6, Land Transfer Act 1897 (c. 65), see hereon *Wheelwright v. Walker* 23 Ch. D. 752; *Re Garnett-Orme to Hargreaves* 25 Ch. D. 595; *Constable v. Constable* 32 Ch. D. 233; *Re Coull* [1905] 1 Ch. 712, cited SETTLEMENT; *Re Moore* [1906] 1 Ch. 789, cited COMPRISE.

As to trustee investments, see INVESTMENTS.

"Commissioners, trustees," etc.: see COMMISSIONERS.

Power "in the character of trustee or guardian": see CHARACTER.

Trustees of inheritance: see INHERITANCE.

Trustees for the time being: see TIME BEING.

Stat. Def., Trustee Act 1925 (c. 19), s.68(17); Finance Act 1968 (c. 44), Sched. 15, para. 13; Trustee Savings Bank Act 1969 (c. 50), s.95; Finance Act 1973 (c. 51), ss.16(6), 17(5); Finance Act 1975 (c. 7), Sched. 5, para. 1(7); Trustee Savings Banks Act 1981 (c. 65), s.54; Capital Transfer Tax Act 1984 (c. 51), s.45.

See ACTING TRUSTEE; APPOINT; BARE TRUSTEE; CONTINUING TRUSTEE; CREDITOR; DECLINING TRUSTEE; EXISTING; GRATUITOUS; JUDICIAL TRUSTEE; LAST; NEW TRUSTEE; OFFICIAL; OTHER TRUSTEE; PRIVATE TRUSTEE; PUBLIC TRUSTEE; REMAIN SOLE TRUSTEE; SURVIVING TRUSTEE; TRUST; UNDUE INFLUENCE; UPON TRUST; VESTING.

TRUSTING. See PRECATORY TRUST.

TRUTH. (1) "Plead guilty or admit the truth of the information or complaint" (s.19, Summary Jurisdiction Act 1879 (c. 49)): see *R. v. Essex Justices* [1892] 1 Q.B. 490.

(2) Compromise of a claim in reliance on "the truth, accuracy, and completeness" of a statement of affairs by the debtor: see *Assets Co. v. Bain's Trustees* 41 Sc. L.R. 517, reversed 42 Sc. L.R. 835.

"Truth and honour of the settlement": see PARAMOUNT.

TRY. See TRIAL; TRIED.

TUG. See **Tow**.

TUMBRELL. “Is an engine of punishment which ought to be in every liberty that hath view of frankpledge for the correction of scolds and unquiet women” (Cowel).

TUMULTUOUSLY. See **RIOTOUSLY**.

TUNNEL. (1) A tunnel may be a building: see *Schweder v. Worthing Gas Co.* [1912] 1 Ch. 83, cited **BUILDING**.

(2) “Cutting, tunnelling or levelling any land” (Income Tax Act 1945 (c. 32), s.14(1)(b)). “Cutting” and “tunnelling” are extended ways of describing “excavating” (*McIntosh v. Manchester Corporation* [1952] 2 All E.R. 444).

(3) (Lands Clauses Consolidation Act 1845 (c. 18), ss.84, 85): see *Hill v. Midland Railway* 51 L.J. Ch. 774, cited **HEREDITAMENT**; *Bevan v. London Portland Cement Co.* 67 L.T. 615.

TURBARY. (1) “Common of turbary is a right to dig turves (*i.e.* peat, not green turf) in another man’s land, or in the lord’s waste, for fuel to burn in the house; and therefore it is appendant or appurtenant to a house only, and not to land: 5 Assis. 9; *Tyrringham’s Case* 4 Rep. 36 b; *O’Hare v. Fahy* 10 Ir. Com. Law Rep. 318. It cannot be dug for sale: *Valentine v. Penny Noy*, 145; *Hayward v. Cannington* 1 Sid. 354. And it does not give a right to take green turf for making grass plots, or repairing the hedges or fences of a garden: *Wilson v. Willes* 7 East, 121” (Elph. 627). See hereon *Ely, Dean, etc. v. Warren* 2 Atk. 189.

(2) As to what words in an enclosure award will vest the legal estate in the soil for the purpose of turbary, see *Simcoe v. Pethick* [1898] 2 Q.B. 555, cited **SET OUT**, and cases therein cited.

(3) “ ‘Turbaria’ is also taken sometimes for the ground where turves are digged” (Cowel).

See **MOSSSES**; **SUFFICIENT PASTURE**.

TURN. (1) A “turn” of patronage to a church: see *Keen v. Denny* [1894] 3 Ch. 169, and authorities there cited.

(2) “In turn,” in a charterparty, means (unless explained by the evidence) in the order of readiness (*Robertson v. Jackson* 15 L.J.C.P. 28; *Lawson v. Burness* 1 H. & C. 396; *King v. Hinde* 12 L.R. Ir. 113).

(3) “In turn to deliver”: as to what evidence of usage will enable the court to construe these words in a charterparty in a particular way, see *Robertson v. Jackson* sup.

(4) “In regular turns of loading”: as to what evidence is admissible to explain this phrase, cp. *Leidemann v. Schultz* (23 L.J.C.P. 17) with *Hudson v. Clementson* (25 L.J.C.P. 234); see hereon *Lawson v. Burness* and *King v. Hinde* sup.; Carver (12th ed.), 1254 *et seq.*

(5) “Cases have been cited which I take it show *prima facie* the words ‘in regular turn,’ unless there is something to lead to a different conclusion, mean ‘in regular PORT turn’; but none of these cases shows that ‘in regular turn’ cannot mean ‘in regular colliery turn,’ as distinguished from ‘regular port turn’ ” (*per Williams L.J., The Quilpué v. Brown* [1904] 2 K.B. 270, in which case the phrase was construed as “regular colliery turn”). See further *Jones v. Green* [1904] 2 K.B. 275; cp. *Ardan S.S. Co. v. Weir* [1905] A.C. 501, cited **CARGO**. See further *The Cordelia* [1909] P.

27, and *United States Shipping Board v. Strick* [1926] A.C. 545. See also CUSTOMARY TURN.

(6) "Loading in turn": see *Taylor v. Clay* 9 Q.B. 713.
See TURN.

TURN LOOSE. See LOOSE.

TURN OUT. (1) In a clause in an apprenticeship indenture, a "turn-out" of the master's workmen includes a lock-out by him as well as a strike; and if the indenture enables the master to stop the apprentice's wages during a "turn-out," the stipulation is so unfair against the apprentice that the indenture cannot be enforced against him (*Corn v. Matthews* [1893] 1 Q.B. 310; *Meakin v. Morris* 12 Q.B.D. 352); *secus*, of a like provision if the stand-still is through "accident beyond the master's control" (*Green v. Thompson* [1899] 2 Q.B. 1). See hereon 44 S.J. 38; see THROWN OUT.

(2) Agreement not to "turn out" tenant as long as he duly pays his rent: see *Browne v. Warner* 14 Ves. 156, cited MOLEST.

TURN ROUND. See *The John Holloway* [1900] P. 37, and *The River Derwent* 52 L.T. 45, both cited CROSSING.

TURN. The privilege of the turn is the power to hold a court within the precinct of the same authority as the sheriff's turne; and whosoever hath the leet hath this privilege (*Termes de la Ley, Turne del Viscont*).

TURNER'S ACT. Court of Chancery Act 1850 (c. 35).

TURNING OVER. See *Pickford v. Quirke* 44 T.L.R. 15.

TURNOVER. A plaintiff was to be paid commission "on turnover . . . of the company's annual business"; this included all sums received and receivable in the year, whether normal or abnormal, and therefore included lump sum settlements and payments under Government contracts (*Aris-Bainbridge v. Turner Manufacturing Co.* [1951] 1 K.B. 563).

Stat. Def., Companies Act 1981 (c. 62), Sched. 1, para. 94.

TURNPIKE ROAD. (1) "A 'turnpike-road' means a road having toll-gates or bars on it, which were originally called 'turns' and were first constructed about the middle of the eighteenth century. Certain individuals, with the view to the repair of particular roads, subscribed among themselves for that purpose, and erected gates upon the roads, taking tolls from those who passed through them. These were violently opposed at first, and petitions were presented to Parliament against them; and Acts were in consequence passed for their regulation. This was the origin of turnpike roads. The distinctive mark of a turnpike road is the right of turning back anyone who refuses to pay toll" (*per Abinger C.B., Northam Bridge Co. v. London & Southampton Railway* 9 L.J. Ex. 166; see also *R. v. East & West India Docks & Birmingham Railway* 22 L.J.Q.B. 380; *per Lawrence J., R. v. Staffordshire Canal Navigation* 8 T.R. 350).

(2) Dedication of a road to the public, reserving tolls which are gathered by means of toll-bars, does not make the road a turnpike road, unless the scheme has legislative sanction (*Austerberry v. Oldham* 29 Ch. D. 750; *Midland Railway v. Watton* 17 Q.B.D. 30).

(3) "A turnpike road is a highway" (*per* Blackburn J., *Sunk Island Turnpike Road Trustees v. Patrington* 1 B. & S. 756, cited by Bramwell L.J., *R. v. French* 4 Q.B.D. 509).

(4) As to the distinction between a turnpike road and a highway, see *per* Lord Blackburn, *West Riding Justices v. The Queen* 8 App. Ca. 790.

(5) "Turnpike road or public highway" (s.46, Railways Clauses Consolidation Act 1845 (c. 20)) did not include a public footpath (*R. v. Bexley Heath Railway* [1896] 2 Q.B. 74).

(6) "Turnpike or public carriage road" (s.47, Railways Clauses Consolidation Act 1845 (c. 20)), ss.5, 6, Railways Clauses Act 1863 (c. 92), was of general application, and was not limited to such similar roads as were specifically mentioned in the special Act of the particular railway (*R. v. Longe* 66 L.J.Q.B. 278).

(7) The obligation on a railway company not to go over a level crossing of a turnpike road faster than 4 miles an hour (s.48, Railways Clauses Consolidation Act 1845 (c. 20)) was enforced by injunction; a faster rate would not be excused on the ground of being less inconvenient to the public (*A.-G. v. London & North West Riding Railway* [1900] 1 Q.B. 78).

(8) A disturnpiked road became a main road (Highways and Locomotives Amendment Act 1878 (c. 77), s.13). See CEASE.

Stat. Def., Highways (South Wales) Act 1844 (c. 91), s.114; Railways Clauses Consolidation Act 1845 (c. 20), s.3; Roads and Bridges (Scotland) Act 1878 (c. 51), s.3.

TURNPIKE TRUST. See hereon *Sunk Island Turnpike Road Trustees v. Patrington* 31 L.J.M.C. 18.

Stat. Def., Highways (South Wales) Act 1844 (c. 91), s.114.

TUTELAGE. An agreed allowance from husband to wife so long as their son shall be under 21 and be "under the tutelage or care" of the wife, remains payable though the son obtains admission to, *e.g.* Christ's Hospital, where he will be maintained and educated at very small expense to the wife; for he is still under her protection; and no difference is made by an order of court that the son is to spend half of his holidays with his father and half with his mother (*Rowell v. Rowell* 89 L.T. 288).

TWAITE. "*Twaite* signifieth a wood grubbed up, and turned to arable" (Co. Litt. 4 b).

TWELVE-MONTH. (1) "'A twelve-month' includes all the year according to the kalendar; but 'twelve months' shall be reckoned according to twenty-eight days to each month" (*Catesby's Case* 6 Rep. 62 a; see also 2 Bl. Com. 141; Dwar. 674, 675). See MONTH; YEAR.

(2) A hiring agreement "for twelve months 'certain,' after which time either party shall be at liberty to determine the agreement by giving the other a three months' notice," means that at the end of the twelve months either party may (without notice) determine the agreement, and that the stipulation as to notice applies only if the engagement be prolonged beyond the twelve months (*Langton v. Carleton* L.R. 9 Ex. 57).

(3) Bequest of a twelve-month's wages: see SERVANT; *Re Ravensworth* [1905] 2 Ch. 1, cited YEAR; *Re Sheffield* [1911] Ch. 267.

TWENTY-ONE DAYS' CLEAR NOTICE. In the Companies Act 1929 (c. 23), s.117—see Companies Act 1948 (c. 38), s.141—(special resolution), the expression means twenty-one clear days exclusive of the day of service and the day of the meeting (*Re Hector Whaling Ltd.* [1936] Ch. 208).

TYPE. (1) “Types of motor vehicles or . . . trailers” (Road Traffic Act 1960 (c. 16), s.167(1)). Specification in a licence of the permitted unladen weight of a trailer is a specification of a “type” of trailer within this section (*Sanderson (Arthur) (Great Broughton) v. Vickers* (1964) 62 L.G.R. 350).

(2) “Type not commonly used as a private vehicle” (Finance Act 1954 (c. 44), s.16). A mini-van modified only by the attachment of advertisements and a roof-rack for trade purposes does not qualify as such a “type” (*Tapper v. Eyre* [1967] 1 W.L.R. 1077).

TYPEWRITING. See **PRINT**.

TYRE. “Tyre” (Motor Vehicles (Construction and Use) Regulations 1969 (No. 321), reg. 83(1)(f)). For the purposes of this regulation which governs tread patterns, each tyre on a double wheel is to be treated as a separate tyre (*Goosey v. Adams* [1971] R.T.R. 465).

TYTHING. See **TITHING**.

U

UBERRIMA FIDES. When required in contracts: see *per* Romer L.J., *Seaton v. Heath* [1899] 1 Q.B. 782, cited **INSURANCE**. See further Marine Insurance Act 1906 (c. 41), s.17.

UBICUNQUE. See **QUAMDIU**.

ULTIMATE. (1) "Ultimate" and "final" are synonymous (*Re Wales* [1934] V.L.R. 297).

(2) The "ultimate destination" in s.23 of the Exchange Control Act 1947 (c. 14) means the destination which is in the mind of, or intended by the exporter (*Superheater Co. v. Customs and Excise Commissioners* [1979] 1 W.L.R. 858).

An ultimate trust is probably that trust of a series of trusts which is the last prescribed, *e.g.* as distinguished from a resulting trust.

ULTIMATELY. "Person who ultimately becomes entitled to the property" (s.43(2), Conveyancing Act 1881 (c. 41)): see *Re Bowlby* [1904] 2 Ch. 685, cited **ACCUMULATION**. Cp. Trustee Act 1925 (c. 19), s.31(2); *Re Raine* [1929] 1 Ch. 716.

ULTRA VIRES. (1) A thing is done by a public authority, a company, or a fiduciary person, *ultra vires*, when it is not within the scope of the powers entrusted to such authority, company, or person. The difficulty of applying that definition arises when the circumstances are complex, *e.g.* if the directors of a railway company should purchase for the company a quantity of "green spectacles as a speculation," that would be clearly *ultra vires* (*per* Campbell C.J., *Norwich v. Norfolk Railway* 4 E. & B. 443); but if such a board were to build a theatre or chapel, it would, *semble*, be *ultra* or *intra* their powers according to circumstances; "it might be a speculation separate from the railway, and prohibited; or, if works (for the railway) were wanted in a waste place and the company found it to be for their interest to build a town and supply it with all the requisites of inhabitancy, and (in order to secure a permanent supply of workmen of skill and responsibility) added a chapel and a theatre, with religious and secular instruction, it might be for the purpose of the railway, and valid, and though distantly connected, the outlay might be found eventually to increase the profit from the traffic" (*per* Erle J., *ibid.* 415).

(2) So, gratuities to officers and servants of an ordinary trading company, when made as mere gratuities, are *ultra vires*, *e.g.* if made when the business of the company is no longer carried on; *secus*, if reasonably in the nature of stimulants to exertion for the benefit of the company (*Hutton v. West Cork Railway* 23 Ch. D. 654). See further *Stroud v. Royal Aquarium Co.* 89 L.T. 243; *Normandy v. Ind Coope & Co.* [1908] 1 Ch. 84; *Cyclists' Touring Club v. Hopkinson* [1910] 1 Ch. 179; *Ashbury Railway Carriage Co. v. Riche* L.R. 7 H.L. 653, at p. 658; *A.-G. v. Great Eastern Railway* 5 App. Cas. 473; *A.-G. v. Fulham Corporation* [1921] 1 Ch. 440.

(3) Observe that "the words '*ultra vires*' and 'illegality' represent totally different and distinct ideas. It is true that a contract may have both these defects; but it may also have one without the other, *e.g.* a bank has no authority to engage, and usually

does not engage in benevolent enterprises. A subscription made by authority of the board of directors and under the corporate seal, for the building of a church or college or an almshouse, would be clearly *ultra vires*, but it would not be illegal. If every corporation should expressly assent to such an application of the funds, it would still be *ultra vires* but no wrong would be committed and no public interest would be violated" (*Bissell v. Michigan Southern Railway* New York Rep. 258, cited Brice (2nd ed.), 51).

(4) Where a Minister had given a notice of intention to confirm, without modification, a purchase notice served under s.19 of the Town and Country Planning Act 1947 (c. 51), he acted *ultra vires* if he then confirmed the notice with modification without, at least, giving fresh notice of the proposed action (*Ealing Borough Council v. Minister of Housing and Local Government* [1952] Ch. 856).

(5) So a thing may be against some person's rights, e.g. an undue preference by a railway company without being *ultra vires* (*Anderson v. Midland Railway* [1902] 1 Ch. 369). See hereon *Burdett-Coutts v. True Blue Gold Mine Co.* [1899] 2 Ch. 616; *Towers v. African Tug Co.* [1904] 1 Ch. 558; *Manners v. St. David's Gold Mines Co.* [1904] 2 Ch. 593; *Bisgood v. Nile Valley Co.* [1906] 1 Ch. 747; the two last cases were distinguished, and *Burdett-Coutts v. True Blue Gold Mine Co.* sup., was followed in *Fuller v. White Feather Reward Co.* [1906] 1 Ch. 823, but this last case was overruled by, and *Bisgood v. Nile Valley Co.* sup., was approved in, *Bisgood v. Henderson's Transvaal Estates* [1908] 1 Ch. 743; *A.-G. v. North Eastern Railway* [1906] 1 Ch. 310, cited WATER COMPANY; *Corbett v. South Eastern & Chatham Railway* [1906] 2 Ch. 12; *A.-G. v. Mersey Railway* [1906] 1 Ch. 811, cited INCIDENT, applying *London County Council v. A.-G.* [1902] A.C. 168, cited POSITION; *A.-G. v. Pontypridd* [1906] 2 Ch. 257, cited UNLESS; *A.-G. v. Hastings* 67 J.P. 165; *Amalgamated Society of Railway Servants v. Osborne* [1910] A.C. 87, cited TRADE UNION; *Famatina Development Corporation v. Bury* [1910] A.C. 439; *Eccles v. South Lancashire Tramways Co.* [1912] A.C. 465, cited TRAMWAY; *Koffyfontein Mines v. Moseley* 55 S.J. 551. A regulation forbidding golf on Mitcham Common to anyone not an inhabitant of Mitcham is *ultra vires*: see *Mitcham Common Conservators v. Cox* [1911] 2 K.B. 854. See also *Deuchar v. Gas Light, etc. Co.* [1925] A.C. 691.

Cp. ILLEGAL.

UMPIRE. The true meaning of "umpire" is a person to decide between two arbitrators; but it may be used as synonymous with "arbitrator," e.g. where the submission is to an "arbitrator or umpire" (*Re Eyre and Leicester* [1892] 1 Q.B. 136). See hereon *Baring-Gould v. Sharpington Syndicate* [1899] 2 Ch. 91, cited CALL UPON.

UNABLE. (1) A company "unable to pay its debts" (s.79(4), Companies Act 1862 (c. 89) Companies Act 1985 (c. 6), ss.517, 518) connotes that the inability "must be inability to pay debts absolutely due, i.e. debts on which a creditor can go to the company and instantly demand to be paid" (*per James V.-C., Re European Life Assurance* L.R. 9 Eq. 127).

(2) "Unable to pay its debts" (Insurance Companies Act 1974 (c. 49), s.50). The fact that an insurance company does not have sufficient liquid assets to pay its present debts where repayment has not been demanded, does not necessarily mean that it is "unable to pay its debts" within the meaning of this section (*Re Capital Annuities* [1979] 1 W.L.R. 170).

(3) "Unable immediately" to perform obligations (Courts (Emergency Powers))

Act 1943 (c. 19), s.1) did not mean “unable in the prudent course of management”: see *Re A Legal Charge*, dated November 26, 1937 [1949] 1 All E.R. 477.

(4) “Unable to go in person” (Representation of the People Act 1949 (c. 68), s.12). Electors “unable to go in person to the polling station” were those who could not reasonably be expected to go, and covered the student who would have had to spend £3 on a five-hour journey (*Moore v. Electoral Registration Officer for Borders*, 1980 S.L.T. (Sh. Ct.) 39).

“Unable to act”: see INABILITY.

~ See UNWILLING.

UNABLE OR UNWILLING. As to this phrase in conditions of sale: see UNWILLING.

UNADVANCED. “Unadvanced member” of a building society: see *Re Middlesbrough Building Society* 58 L.J. Ch. 771. See WITHDRAWAL.

UNANIMOUS. “Unanimous” determination of creditors and contributories (r. 63(2), Companies Winding-up Rules 1890) referred to the unanimity of all the creditors and contributories at the meetings, and not to unanimity in the result of the two meetings (*Re Johannesburg Land & Gold Trust* [1892] 1 Ch. 583, cited MAY).

UNASCERTAINED. “Unascertained or future goods” (s.18, r. 5(1), Sale of Goods Act 1893 (c. 71)): see *Carmichael v. Macbeth* 4 Fraser 345; GOODS; *Forster v. Blyth* [1926] Ch. 494.

UNAUTHORISED POSSESSION. See POSSESSION.

UNAVOIDABLE. Unavoidable accident: see INEVITABLE.

(1) “Unavoidable cause” of absence from work of a workman, under s.10(iii), Workmen’s Compensation Act 1925 (c. 84), did not include holidays such as “wakes week,” Christmas, Easter, etc., or short stoppages on account of accidents to the machinery or to a canal adjoining the works, inasmuch as they were not *ejusdem generis* with illness: see *per* Fletcher Moulton L.J., in *Bailey v. Kenworthy* [1907] 1 K.B. 465. Neither did it include a strike: see *Price v. Guest, Keen & Nettlefolds Ltd.* [1917] 1 K.B. 780, affirmed [1918] A.C. 760.

(2) “Unavoidable cause” for absence from school (Education Act 1944 (c. 31), s.39(2)(a)) must refer to a cause which affects the child and has in it an element of emergency and not to a case where, *e.g.* a widowed mother is unable to do the housework and the child is the only person available (*Jenkins v. Howells* [1949] 2 K.B. 218).

(3) “Unavoidable” (Food and Drugs Act 1955 (c. 16), s.3(3)). To establish a defence under this section to a charge of selling food containing extraneous matter it is necessary to show that the presence of the matter was a consequence of the process of collection or preparation of food, and that it could not have been avoided by human agency. It is not sufficient to show that all reasonable care to avoid its presence was taken (*Smedleys v. Breed* [1974] A.C. 839).

(4) “Unavoidable hindrance” is very unusual in a charterparty exception (*per* Esher M.R., *Crawford v. Wilson* 12 T.L.R. 171, which case see for an example of such a hindrance; see also *Gardiner v. Macfarlane* 20 Sess. Ca. 4th Ser. 427, cited CONTROL). See further *Larsen v. Sylvester* [1908] A.C. 295, cited WHATSOEVER.

(5) An exception, in a charterparty, of unavoidable hindrances, held not to apply to unavoidable hindrances occurring before the commencement of the voyage (*Monroe Bros. Ltd. v. Ryan* [1935] 2 K.B. 28).

(6) Where the circumstances which caused the delay existed before the charter was concluded, and could have been discovered by enquiry, they did not amount to "unavoidable hindrances" (*The Angelia, Trade and Transport v. Iino Kaium Kaisha* [1973] 1 W.L.R. 210).

(7) "It has been decided that a condition of sale for payment of interest, if by reason of any 'unavoidable obstacle' the contract could not be completed by a day named, did not apply to a delay occasioned by the state of the title; and therefore interest was not payable under the condition" (Sug. V. & P. (14th ed.) 635, citing *Birch v. Podmore* unreported). So, of the phrase "unforeseen or unavoidable obstacles" (*Monk v. Huskisson* 4 Russ. 121, n.; but see on this Sug. V. & P. (14th ed.) 635). See further Dart, 719.

"Unavoidable delay in the completion of a journey," see DELAY.

UNBAPTISED. A child baptised with water in the name of the Trinity by a Wesleyan minister, not authorised to administer the rite of baptism, was not "unbaptised" within the Burial Service, as incorporated into the Act of Uniformity 1662 (c. 4) (*Escott v. Mastin* B. & F. 4).

UNBORN. (1) "Unborn," in s.30, Trustee Act 1850 (c. 60), s.31, Trustee Act 1893 (c. 53) and s.48, Trustee Act 1925 (c. 19)), means "non-existent in the character to entitle a person to the property in question" (*per* Jessel M.R., *Basnett v. Moxon* L.R. 20 Eq. 185). Among other illustrations the learned judge said, "In a sense, the future heir-at-law of a living person, although he may be a living man, is not a living heir. As heir, he comes into existence at a future period."

(2) "Person unborn" (Variation of Trusts Act 1958 (c. 53), s.1(1)(c)) means any future person who would, if there was no variation, become interested under the trusts of the instruments which it is sought to vary (*Re Cohen's Settlement Trusts, Eliot-Cohen v. Cohen* [1965] 1 W.L.R. 1229).

See BORN; LIVING; TO BE BORN.

UNCERTAIN. (1) "Uncertain interest" in land (s.3, Statute of Frauds 1677 (c. 3)) relates "only to interests which are uncertain as to the time of their duration" (*per* Lee C.J., and Denison J., *Wood v. Lake Sayer*, 3).

(2) (Law of Property Act 1925 (c. 20), s.184; the word is here used in its ordinary acceptation as denoting a reasonable element of doubt (*Hickman v. Peacey* [1945] A.C. 304, 324). See also *Re Bate* [1947] L.J.R. 1409; *Re Comfort* [1947] V.L.R. 237.

Uncertain rent: see CERTAIN RENT.

See VAGUE.

UNCERTAINTY. (1) In indictments and charges, etc.: see *R. v. Jones* [1921] 1 K.B. 632.

(2) A condition in a will for forfeiture of the interest of a beneficiary if she should marry a person "not of Jewish parentage" held void for uncertainty (*Clayton v. Ramsden* [1943] A.C. 320). A like condition on marrying a person "not of the Jewish faith" also held void for uncertainty, following dicta in *Clayton v. Ramsden* sup. (*Re Donn* [1944] Ch. 8; *Re Myers* [1947] N.Z.L.R. 828; *Ex p. Perel* 1948 (3)

S.A.L.R. 195 ("Jewish religion" uncertain)). But see *Re Harris* [1950] V.L.R. 182, in part distinguishing *Clayton v. Ramsden* sup.

(3) The expression "member of the Jewish faith" is one of complete uncertainty and a gift over in a will on marriage to such a person is void (*Re Moss's Will Trusts*, *Moss v. Allen* 114 L.J. Ch. 152). See also *Re Wolffe* [1953] 1 W.L.R. 1211. Gifts expressed to be given on marriage to a person of "Jewish race" failed because it was held to be impossible to give sufficient meaning to the term (*Re Tarnpolsk*, *Barclays Bank v. Hyer* [1958] 1 W.L.R. 1157).

(4) Where, under a settlement, the trustees were to pay the income to a beneficiary "so long as he shall be of the Jewish faith" and shall be married to "a wife of Jewish blood by one or both of her parents," any doubt to be resolved by either of two designated rabbis, there was held to be no uncertainty because the settlor had made specific provision for the resolution of any doubt or difficulty with regard to the qualifying conditions (*Re Tuck's Settlement Trusts* [1976] 1 All E.R. 545).

(5) A provision in a will that any beneficiary who might at any time become a convert to the Roman Catholic religion should thereupon *ipso facto* forfeit the right to any income or capital in the testator's estate was held not uncertain, for conversion was evidenced by the overt act of baptism into the Roman Catholic faith; but the words "*ipso facto*" were held to point to the existence of an interest at the time of the act; consequently the clause did not apply where a beneficiary had become a convert during the testator's lifetime (*Re Evans* [1940] Ch. 629).

(6) Where a life interest was given by will to A with a provision that the payments to her should continue only so long as she should continue to reside in Canada, the last-mentioned provision was construed as a condition subsequent and held void for uncertainty (*Sifton v. Sifton* [1938] A.C. 656). See also *Re Borwick* [1933] Ch. 657, cited PUBLIC POLICY.

Contracts: see HIRE-PURCHASE TERMS; SUBJECT TO.

UNCHASTITY. (Slander of Women Act 1891 (c. 51), s.1) includes lesbianism (*Kerr v. Kennedy* [1942] 1 K.B. 409).

UNCLEANNESS. See IMMORAL.

UNCONDITIONAL. (1) "Unconditional order in writing," to constitute a bill of exchange: see *Bavins v. London & S. W. Bank* [1900] 1 Q.B. 270. As regards a cheque, see *Thairlwall v. Great Northern Railway* [1910] 2 K.B. 509, cited DIRECTOR; see also *Roberts & Co. v. Marsh* [1915] 1 K.B. 42, where it was held that the words "to be retained," written on a cheque by the drawer, did not prevent it being an unconditional order to pay so far as the bank was concerned.

(2) The natural, first and usual meaning of the word "unconditionally" is "without conditions"—that is, conditions well known to the parties' advisers which might have been stipulated (*Smith v. Smith* 145 L.T. 23).

(3) Where there was a testamentary direction to A to pay debts and legacies and other matters, "and to enable him to do all this, I 'bequeath unconditionally' unto him all my estates and landed property"; held, that "unconditionally" did not mean without any condition annexed as to the payment of legacies, but meant an absolute ownership of the fee simple for the purpose of doing that which he is ordered to do (*Thomson v. Eastwood* 2 App. Ca. 215, 229).

UNCONSCIONABLE DAMAGES. As to when agreed damages are extravagant, exorbitant, or unconscionable, so as to prevent them from being regarded as liqui-

dated damages, see *per* Lord Davey, *Clydebank Co. v. Yzquierdo y Castaneda* [1905] A.C. 6, cited LIQUIDATED DAMAGES.

UNCONTROLLABLE. "Uncontrollable impulse" is no defence in criminal proceedings unless it is the outcome of actual insanity: see *R. v. Holt* 15 Cr. App. R. 10; see further *R. v. Jolly* 83 J.P. 296.

UNCONTROLLED. See DISCRETION. Cp. CONTROL.

UNCULTIVATED. "Waste or uncultivated land": see *Campbeltown Shipbuilding Co. v. Robertson* 35 Sc. L.R. 722, cited WASTE GROUND.

UNCUSTOMED. Uncustomed goods include goods allowed to enter free of duty which are dutiable when found in the possession of persons not entitled to exemption from duty (*M'Queen v. M'Cann* 1945 S.C. (J.) 151).

UNDEFINED. "Undefined time" (s.32(c), Partnership Act 1890 (c. 39)): see *Moss v. Elphick* [1910] 1 K.B. 846, cited PARTNERSHIP.

UNDER. (1) *Semble*, a power to carry pipes, etc., across a public road is different from a power to carry them "under" the road (*South Eastern Railway v. European, etc., Telegraph Co.* 9 Ex. 363). Cp. UNDERGROUND.

(2) Power to erect poles "on, in, over, or under," a street: see *Escott v. Newport* [1904] 2 K.B. 369, cited VEST.

(3) "Under, in, upon, over, along, or across": see *South Eastern Railway v. National Telephone Co.* 77 L.J. Ch. 679, cited ACROSS.

(4) "Constructed under": see *Wakefield Light Railway v. Wakefield* [1907] 2 K.B. 256, cited RAILWAY.

(5) "Under the direction" of a qualified medical practitioner, under s.1(2), Midwives Act 1902 (c. 17); see *Davis v. Morris* [1923] 2 K.B. 508. See now Midwives Act 1951 (14 & 15 Geo. 6, c. 53), s.9. See also *Re Unite* 75 L.J. Ch. 163, cited DIRECTION.

(6) Where a special Act incorporates a public Act, things done pursuant to the latter are done "under" the former (*London & North Western Railway v. Runcorn* [1898] 1 Ch. 561, cited SEWER).

(7) Transfer "under" the Electricity (Supply) Act 1919 (c. 100): see *R. v. Minister of Labour* [1924] 2 K.B. 210.

(8) "Claims arising under this Act" (Increase of Rent and Mortgage Interest (Restrictions) Act 1920 (c. 17), s.17(2)): see *Tideway Investment & Property Holdings v. Wellwood* [1952] Ch. 791.

(9) Burial ground sold "under the authority of an Act" (s.5, Disused Burial Grounds Act 1884 (c. 72)): see *A.-G. v. London Parochial Charities* [1896] 1 Ch. 541, cited SET APART.

(10) Compensation under Workmen's Compensation Act 1897 (c. 37), was "paid under" the Act, within s.6, where the claim was settled by agreement between employer and workman, as well as when it was settled by an award (*Thompson v. North Eastern Marine Engineering Co.* [1903] 1 K.B. 428).

(11) "Under this Act" (Misuse of Drugs Act 1971 (c. 38), s.27(1)). A common law conspiracy to infringe s.4 of this Act, a statutory provision creating a substantive offence, was held to be of such a nature and character as to constitute an offence "under this Act" for the purposes of s.27 (*R. v. Kemp* (1979) Cr. App. R. 330).

(12) A workman “works under a contract with an employer” (s.10, Employers and Workmen Act 1875 (c. 90)) even though he “has not contracted directly with an employer but has been engaged by an agent of the employer to work for the employer, viz. by a butty-man or a ganger, or to meet the case of an apprentice, or other similar cases” (*per* Smith L.J., *Marrow v. Flimby, etc., Co.* [1898] 2 Q.B. 588): “There is one obvious instance of such working under a contract, viz. that of a volunteer who, without communication with the employer, gives his services either to supplement or replace the workman actually employed” (*per* Rigby L.J., *ibid.*). In *Marrow v. Flimby* the workman was employed in a mine by a person who had contracted to sink a shaft therein, and, whilst so employed, received injury, and it was held that he was working “under a contract” with the contractor, and not with the mine-owners, a ruling which was followed in *Fitzpatrick v. Evans* [1902] 1 K.B. 505.

(13) “Entitled under,” *e.g.* a will: see *Collingwood v. Stanhope* L.R. 4 H.L. 43; *Re Crawshay* [1891] 3 Ch. 176, cited SETTLE.

(14) Money paid “under an execution . . . to avoid sale” (s.11(2), Bankruptcy Act 1890 (c. 71) (superseding *Re Pearson* 3 Morr. 187), had to be (1) the execution debtor’s own money, (2) paid under direct stress of the execution, and (3) to avoid an actual sale, and not a mere re-seizure (*Bower v. Hett* [1895] 2 Q.B. 337). See Bankruptcy Act 1914 (c. 59), s.41.

(15) Guarantee of payment “under the said policy” does not include a payment under an arrangement “in lieu” of the policy (*Mortgage Insurance v. Pound* 64 L.J.Q.B. 394).

(16) “Payment . . . under or in consequence of a policy” (Road Traffic Act 1930 (c. 43), s.36(2), Road Traffic Act 1972 (c. 20), s.154(1)): see *Glasgow Royal Infirmary v. Municipal Mutual Insurance* (1953), 69 Sh. Ct. Rep. 297.

(17) Persons “who are for the time being, under the ‘settlement,’ trustees with future power of sale” (s.30(iv), Settled Land Act 1925 (c. 18)): “ ‘under’ must be read as meaning either ‘subject to,’ or ‘bound by,’ a future trust for sale; or trustees of a settlement ‘which contains’ a future trust for sale” (*per* Buckley J., *Re Jackson* [1902] 1 Ch. 258, cited TRUSTEE).

(18) Property the subject of a power of appointment passes “under or by virtue” of the power, and not of the instrument exercising it (*A.-G. v. Chapman* [1891] 2 Q.B. 526, citing *Charlton v. A.-G.* 4 App. Ca. 427, *Braybrooke v. A.-G.* 4 H.L. Ca. 150, *A.-G. v. Floyer* 9 H.L. Ca. 477, and *A.-G. v. Smythe* 9 H.L. Ca. 497, all cited PREDECESSOR; *per* Wright J., on definition of SETTLEMENT, *A.-G. v. Dodington* 66 L.J.Q.B. 441; on appeal [1897] 2 Q.B. 373); cp. *Jackson v. Commissioner of Stamps* [1903] A.C. 350, cited ABSOLUTELY ENTITLED).

(19) A curate in the Church of England was not employed “under any contract of service” within the meaning of Pt. 1, National Insurance Act 1911 (c. 55), and was not therefore compulsorily insurable under the Act: see *Re Church of England Curates Employment* [1912] 2 Ch. 563.

(20) “Under its trade name,” within proviso to s.14(1), Sale of Goods Act 1893 (c. 71): see *Baldry v. Marshall* [1925] 1 K.B. 260.

(21) “Under proper conditions,” within s.14, Trade Union Act 1871 (c. 31), Sched. 1, para. 6: see *Dodd v. Amalgamated Marine Workers’ Union* 93 L.J. Ch. 100.

(22) “Under the trusts and limitations of this my will”: see *Re Trevanion* [1910] 2 Ch. 538, cited ACTUAL.

(23) “Under” is sometimes more aptly translated by the expression “pursuant

to" than by the phrase "by virtue of" (*R. v. Clyne, Ex p. Harrap* [1941] V.L.R. 200).

(24) Place of profit "under the company": see *Astley v. New Tivoli* [1889] 1 Ch. 151, cited PLACE.

"Under arrest": see ARREST.

"Under authority," see AUTHORITY.

"Under command": see COMMAND.

"Under control": see CONTROL.

"Driving under the influence of drink": see DRIVE.

"Acting under": see ACTING.

"Under the authority": see BY AUTHORITY.

"Passing under": see PASSING.

"Under the same circumstances": see SAME.

"Salvage under this Act": see SALVAGE.

Company "incorporated under" an Act: see BY.

Property "vested under" an Act: see VESTED.

"Under or by virtue": see PURSUANCE.

"Under any circumstances whatsoever": see IN NO CASE.

"Sales under the Lands Clauses Consolidation Act 1845 (c. 18)": see SALE.

"Under the supervision of the captain": see STOWAGE.

See CLAIMING UNDER; THROUGH; UNLESS; WITHIN OR UNDER; IN RESPECT OF.

UNDER HAND. (1) Agreement "under hand only" (as regards stamp, on which see EVIDENCE OF A CONTRACT) means otherwise than by deed; therefore, an unsigned document embodying the binding terms of a contract requires an agreement stamp (*Walker v. Rostron* 11 L.J. Ex. 173; *Chadwick v. Clarke* 14 L.J.C.P. 233). In this last case Cresswell J., said, "an unsigned agreement may be binding provided it does not require a signature by the Statue of Frauds." See SIGNED.

(2) "Under the hand of the appellant" (Charitable Trusts Act 1860 (c. 136), s.11), as including "under the hand of his agent": see *Re Diptford Parish Lands* [1934] Ch. 151.

(3) "Under my hand" held not applicable to an unsigned writing (*Waterson's Trustees v. St. Giles' Boys' Club* 1943 S.C. 369).

"Under his hand": see HIS HAND.

UNDER PROTEST. (1) Appearances to a writ "under protest" is one denying the obligation to appear at all, *e.g.* when the jurisdiction of the court is objected to (*The Vivar* 2 P.D. 29; *Mayer v. Claretie* 7 T.L.R. 40; *Firth v. Palmer* [1893] 1 Q.B. 768), or a partner "may enter an appearance under protest, denying that he is a partner" (the old R.S.C., Ord. 48 A, r. 7, see now R.S.C., Ord. 81, r. 4(2)). As to a conditional appearance, see R.S.C., Ord. 12, r. 7.

(2) Payment under protest: "It is said that the money was received by the petitioner and the receipt given under protest. These words are often used on these occasions, but they have no distinct technical meaning, unless accompanied with a statement of circumstances, showing that they were used by way of notice or protest, reserving to the party by reason of such circumstances, a right to a taxation, notwithstanding such payment. The words have no distinct meaning by themselves, and amount to nothing unless explained by the proceedings and circumstances" (*per Langdale M.R., Re Massey* 8 Bea. 462). See also *Re Dearden* 9 Ex. 210. See further *Re Cheesman* [1891] 2 Ch. 289, and *Re Williams* 65 L.T. 68, both cited SPECIAL CIRCUMSTANCES, justifying the taxation of a solicitor's costs after payment

(3) "A tender may be effectually made 'under protest,' which imports not to impose a condition on acceptance of the money, but merely to prevent the fact of payment operating as an admission of the claim" (Leake, 746, citing *Scott v. Uxbridge Railway* L.R. 1 C.P. 596; *Sweny v. Smith* L.R. 7 Eq. 324; *Greenwood v. Sutcliffe* [1892] 1 Ch. 1).

UNDER WAY. (1) In Regulations for Preventing Collisions at Sea 1879: "A vessel making way through the water is under way. A sailing vessel hove-to is under way (*The Rosalie* 5 P.D. 245; *The City of London* Swabey, 248). A vessel driven from her anchors in a gale of wind, even if wholly unmanageable, is under way (*The George Arkle* Lush. 382; but see *The Buckhurst* 6 P.D. 152, cited INEVITABLE; and a vessel dropping with the tide although she may have an anchor overboard, is under way so long as she is not held by her anchor (*The Esk* L.R. 2 A. & E. 350)" (1 Maude & P. 589). "The true criterion as to the application of the Regulation must be whether the vessel be actually holden by, and under the control of, her anchor or not. The moment she ceases to be so, she is in the category of a vessel 'under way' and must carry the appointed coloured lights" (*per* Sir R. Phillimore, *The Esk* L.R. 2 A. & E. 353; see now Regulations for Preventing Collisions at Sea 1910 (S.R. & O., Rev. Vol. XIV, p. 515). See further *The Romance* 83 L.T. 488, cited AT ANCHOR; TOW.

(2) In Regulations for Preventing Collisions at Sea 1910, a vessel is "under way" "when she is not at anchor, or made fast to the shore, or aground"; see the Preliminary Rules thereto.

(3) A sailing barge having her mast lowered, her anchor on the ground, and dredging down Thames, is not a sailing vessel "under way," within Art. 6, Rules for the navigation of the River Thames 1880 (*The Indian Chief* 14 P.D. 24); nor is she "at anchor" within Art. 7 (*ibid.*).

See COMMAND; SAIL; STATIONARY. See *The Palembang* [1829] R. 246.

UNDERGROUND. (1) A statutory power to lay, *e.g.* pipes or wires, "underground" in streets, involves authority to open the streets for that purpose (*Montreal v. Standard Light Co.* [1897] A.C. 527). Cp. UNDER.

(2) "Underground bakehouse." Stat. Def., Factory and Workshop Act 1901 (c. 22), s.101(3). See hereon *Schwerzerhof v. Wilkins* [1898] 1 Q.B. 640, cited USED. See further *Evans v. Gallon* 68 J.P. 537. See now BASEMENT BAKEHOUSE.

(3) Underground trespass: see *Bulli Coal Mining Co. v. Osborne* [1899] A.C. 351.

(4) Underground water: see SUBTERRANEAN WATER; INJURIOUSLY AFFECTED; *Acton v. Blundell* 13 L.J. Ch. 289, cited INJURY. See further *Salt Union v. Brunner* [1906] 2 K.B. 822.

UNDERLEASE. (1) "An assurance for a period less than the whole term is an underlease, and not an assignment (*Cottee v. Richardson* 7 Ex. 143, cited TERM); though an assurance purporting to be an underlease, but which comprises the whole term, may be an assignment (*Langford v. Selmes* 3 K. & J. 220; *Beardman v. Wilson* L.R. 4 C.P. 57)"; *per cur.* *Bryant v. Hancock* [1898] 1 Q.B. 716, cited ASSIGNS.

(2) "Where a person parts with all his estate in land, as where he purports to demise for a period co-extensive with his own interest or longer, the transaction is in law an assignment, although purporting to be a demise; an underlease for the whole of a residue of a term is in law an assignment"; such a sub-lessor cannot dis-

train for rent in arrear under the instrument (*per* Swinfen Eady J., *Lewis v. Baker* [1905] 1 Ch. 46, citing *Parmenter v. Webber* 8 Taunt. 593, and *Preece v. Corrie* 6 L.J.(O.S.) C.P. 205). See Law of Property Act 1925 (c. 20), Pt. V.

(3) Though a covenant against assigning is not broken by an underlease (see ASSIGN); yet a covenant against underletting will, generally, restrain an assignment (*Greenaway v. Adams* 12 Ves. 395; but see on this case *Re Doyle and O'Hara* [1899] 1 Ir. R. 113, cited SET).

(4) An underlease whose head lease had been disclaimed by the head lessor's trustee in bankruptcy was held properly described, in a contract for sale, as an "underlease" (*Re Thompson and Cottrell's Contract* [1943] Ch. 97).

(5) A covenant not to "underlease" is broken by a letting from year to year (*Timms v. Baker* 49 L.T. 106).

(6) Letting lodgings has been held not to be a breach of a covenant not "to grant any underlease for any term whatsoever, or let, assign, transfer, set over, or otherwise part with," without the licence of the lessor; for "the covenant," said Lord Ellenborough, "can only extend to such under-letting as a licence might be expected to be applied for; and whoever heard of a licence from a landlord to take in a lodger?" (*Doe d. Pitt v. Laming* 4 Camp. 77). But the same learned judge ruled otherwise where the covenant was not to let the premises, or any part thereof (*Roe v. Sales* 1 M. & S. 297), and the ruling itself has been questioned in a later case (*per* Parke and Alderson BB., *Greenslade v. Tapscott* 3 L.J. Ex. 328), where land was suffered to be occupied by more persons than one. On principle it would seem that if the covenant be not to sublet the premises or any part, the letting lodgings would be a breach.

(7) Merely letting a purchaser into possession of leaseholds he paying no rent and incurring no tenant's obligations to the vendor, is not an assignment of the term, nor is it an under-letting of the premises, within a clause of forfeiture (*Horsey v. Steiger* [1898] 2 Q.B. 259, cited LIQUIDATION); but such an act would be a forfeiture if the covenant were extended to not "parting with the possession" of the premises (*Horsey v. Steiger* [1898] 2 Q.B. 259, on which latter phrase see further ASSIGN).

(8) Will not "assign or underlet"; see *Re Riggs* [1901] 2 K.B. 16, cited ASSIGN.

(9) A person who has a right to have a charge by way of legal mortgage is an "underlessee" within s.146(4) of the Law of Property Act 1925 (c. 20) (*Re Good's Lease, Good v. W. (Trustee) and W.* [1954] 1 W.L.R. 309; *Grand Junction Co. v. Bates* [1954] 2 Q.B. 160).

See DERIVATIVE LEASE; LEASE; LEASEHOLD REVERSION; LESSEE; LEASE; UNREASONABLY.

UNDERLYING. Stat. Def., Acquisition of Land Act 1981 (c. 67), Sched. 2, para. 1.

UNDERLYING TAX. Stat. Def., Income and Corporation Taxes Act 1970 (c. 10), s.500.

UNDERNEATH. "Underneath or which follows" the signature (Wills Act Amendment Act 1852 (c. 24), s.1). See *In the Goods of Smith* [1931] P. 225; *In the Goods of Long* [1936] P. 166.

UNDERPIN. See *Stevens v. Metropolitan District Railway* 29 Ch. D. 60, especially judgment of Baggallay L.J.

UNDERSTAND. (1) *Seem*, “it is understood” connotes the same as “it is agreed” (*Higginson v. Weld* 14 Gray, 170). But in *Hill v. Fox* (4 H. & N. 364) the court said, “it is difficult to say what an ‘understanding’ is”. It has been said that “understandings are always misunderstood.”

(2) “It is difficult to see what effect in law is to be found in an understanding”: *per* Viscount Simonds in *Sterling Engineering Co. v. Patchett* [1955] A.C. 534.

(3) Where, in a letter to clients, a firm of solicitors records an “understanding” that certain legal work shall be done by them, and the client replies that he is prepared “to accept it,” the use of the word “understanding” was not enough to create any contractual relationship between a solicitor and layman (*Milner (J. H.) & Son v. Bilton (Percy)* [1966] 1 W.L.R. 1582). But in *Campbell v. I.R.C.* [1970] A.C. 77, although it was argued that an “understanding” is binding in honour only, it was held that this word is no less appropriate to express a legally binding agreement than the word “agreement.”

UNDERTAKE. (1) The meaning of Solicitors Remuneration Order, r. 6, giving a solicitor power to elect his mode of remuneration “before undertaking any business” is “that after a solicitor has accepted the employment and done ‘any’ work in it for his client for which he could charge him if the scale did not apply, he has ‘undertaken’ the business, and it is too late for him to elect under r. 6” (*per* Kay J., *Re Allen* 34 Ch. D. 433; *Re Metcalfe* 57 L.J. Ch. 82; see also *Hester v. Hester* 34 Ch. D. 607; *Re Love* 40 Ch. D. 637; *Re Stewart* 41 Ch. D. 494). But, so long as the solicitor duly “elects” to his own client in the matter, it is immaterial that such client is a local authority or other public body, or is a person in a fiduciary capacity (*Re Evans* [1905] 1 Ch. 290). See **BUSINESS**.

(2) “Undertake, execute, hold, or enjoy” a contract (s.1, House of Commons (Disqualification) Act 1782 (c. 45)) means, as regards “undertake,” to enter into; as regards “execute,” to take on oneself the execution of another’s contract; as regards “hold,” to take a transfer of another’s contract; and as regards “enjoy,” a *cestui que trust* who is to enjoy the benefit of the contract; but the phrase does not, under any or either of its words, include a contract which has been executed and under which nothing remains to be done except paying the contractor (*Royse v. Birley* L.R. 4 C.P. 296, cited **PUBLIC SERVICE**, especially judgment of Brett J.).

(3) “Undertake,” in s.42, Public Health Act 1875 (c. 55) “means that the local authority either expressly resolve to do the thing mentioned in the section or in practice so acted as to show that they had resolved to do it” (*per* McCardie J., in *Leak v. Epsom Rural District Council* [1922] 1 K.B. 383, at p. 392, cited **REASONABLE MEANS**). See Public Health Act 1936 (c. 49), s.72.

(4) “Undertakes to certify,” under s.62, Trade Marks Act 1905 (c. 15), as amended by s.12 and Second Schedule, Trade Marks Act 1919 (c. 79), meant “makes it its business to certify,” and meant the certificate part of its undertaking: see *per* Warrington L.J., in *Union Nationale Syndicate’s Application* [1922] 2 Ch. 653, at p. 692, cited **DISTINCTIVE**.

(5) “Arrangements for the making of a film are undertaken” (Cinematograph Films Act 1948 (c. 23), Sched. I, paras. 25, 44(1), Films Act 1960 (c. 57), s.50(1)) by persons who are financially and generally responsible for its making: see *Re F. G. (Films)* [1953] 1 W.L.R. 483.

(6) “Undertaken” (Children Act 1958 (c. 65), s.2(1)) meant “in fact provided” (*Surrey C.C. v. Battersby* [1965] 2 Q.B. 194).

(7) “Undertaking” building operations (Construction (Lifting Operations) Regulations 1961 (No. 1581), reg. 3). A plant-hire company which hired out a crane and

driver to a construction company for use in building operations was held to be an "employer of workmen who is undertaking" building operations or works for the purposes of this regulation (*Williams v. West Wales Plant Hire Co.* [1984] 1 W.L.R. 1311).

UNDERTAKING. (1) In Lands Clauses Consolidation Act 1845 (c. 18), "undertaking" means an undertaking of a public nature; and does not include such an undertaking as the Westminster Palace Hotel (*Wale v. Westminster Palace Hotel Co.* 8 C.B.N.S. 276), or Sion College (*Re Sion College, Ex p. London Corporation* 31 S.J. 378). See **PUBLIC UNDERTAKING**.

(2) "Undertaking" (London Street Tramways Act 1870 (c. clxxi): see *North Metropolitan Tramways Co. v. London County Council* 72 L.T. 586, affirmed 60 J.P. 23.

(3) Lands, etc., "suitable to and used of the purposes of their undertaking": see *Re Manchester Carriage Co. and Ashton-under-Lyne* 68 J.P. 576, and *Manchester Carriage Co. v. Swinton* 68 J.P. 440, both cited **USED**.

(4) "The undertaking has not been completed within the time limited" (s.1(1), Parliamentary Deposits and Bonds Act 1892 (c. 27)) meant completed by the company authorised by the special Act: see *Re Peckham, etc., Tramways Bill* [1910] 2 Ch. 1.

(5) "Undertaking," in a charge contained in a mortgage debenture given by a company, would generally be held to cover all its present and future acquired property (*Re Panama Co.* 5 Ch. 318; *Re Florence Land Co.* 10 Ch. D. 530; *Re Mersey Wood Co.* 1 T.L.R. 566; but see *Re New Clydach Iron Co.* L.R. 6 Eq. 514; see hereon Buckl. (7th ed.) 185, 186; 1 Palmer Co. Prec. (7th ed.) 772); but not its "uncalled capital" (*King v. Marshall* 34 L.J. Ch. 163; *Re Marine Mansions Co.* L.R. 4 Eq. 601; see further *Re West Lancashire Railway* 63 L.T. 56). Yet, even as regards uncalled capital, when a company has power to sell its "undertaking" there is nothing to prevent the directors from calling up the outstanding capital and selling the proceeds (*New Zealand Gold Co. v. Peacock* [1894] 1 Q.B. 622). And though it be incorrect to speak of a solvent company's property as **ASSETS**, yet if that word be used in a company's mortgage debenture or charge it would include uncalled capital (s.38, Companies Act 1862 (c. 89); *Morris' Case* 7 Ch. 200, 204; 8 Ch. 800; *Webb v. Whiffin* L.R. 5 H.L. 711, 724, 735; *Re Pyle Works* 44 Ch. D. 534; *Re Pyle Works No. 2* [1891] 1 Ch. 173; *Page v. International Agency* 62 L.J. Ch. 610). See Companies Act 1948 (c. 38), s.212. An effective charge on uncalled capital cannot be made if the call is prevented from being made by a resolution under s.5, Companies Act 1879 (c. 76) (*Re Mayfair Property Co.* [1898] 2 Ch. 28). See Companies Act 1948 (c. 38), s.64. See **FLOATING SECURITY**.

(6) "Undertaking," as regards a railways debenture: see *Doe d. Myatt v. St. Helen's Railway* 2 Q.B. 364; *Gardner v. London, Chatham & Dover Railway* 2 Ch. 201; on which case see 1 Jarm. (4th ed.) 224, 225, and especially as to the meaning and application of the leading case of *Gardner v. London, Chatham & Dover Railway*, see *Redfield v. Wickham* 13 App. Ca. 474; *Central Ontario Railway v. Trusts & Guarantee Co.* [1905] A.C. 576; *Re David* 43 Ch. D. 27; *Re Yerbury* 62 L.T. 55; *Re Parker* [1891] 1 Ch. 682; *Re Portsmouth Tramways Co.* [1892] 2 Ch. 366; *Re Crossley* [1897] 1 Ch. 934. See also *Legg v. Mathieson* 29 L.J. Ch. 385; *Furness v. Caterham Railway* 7 W.R. 660; *Blaker v. Herts & Essex Waterworks Co.* 41 Ch. D. 399, on which last case see *Re Barton-upon-Humber Water Co.* 42 Ch. D. 585.

(7) An I.O.U. might have been (*R. v. Chambers* L.R. 1 C.C.R. 341), and a guarantee by way of suretyship (*R. v. Reed* 2 Moody, 62; *R. v. Stone* 2 C. & K. 364) or

against negligence and dishonesty (*R. v. Joyce* 34 L.J.M.C. 168) was, an “undertaking for the payment of money” within s.23, Forgery Act 1861 (c. 98).

(8) “Undertaking” (Finance Act 1927 (c. 10), s.55(1)(c)(i)) denoted the business or enterprise undertaken by a company (*Baytrust Holdings v. I.R.C.* [1971] 1 W.L.R. 1333).

(9) “Undertaking of liability under policies of insurance,” in s.1, Assurance Companies Act 1909 (c. 49), included re-insurance business: see *A.-G. v. Forsikringsaktieselskabet National of Copenhagen* [1925] A.C. 639.

(10) A trustee savings bank is an “undertaking” within art. 1 of the Industrial Disputes Order 1951 (No. 1376) (*R. v. Industrial Disputes Order ex p. East Anglian Trustee Savings Bank* [1954] 1 W.L.R. 1093; [1954] 2 All E.R. 730). So also is a brewery (*R. v. Industrial Disputes Tribunal, ex p. Courage* [1956] 1 W.L.R. 1062).

(11) “Undertaking” (Industrial Relations Act 1971 (c. 72), ss.27(1)(a), 167(1)(b)). A person working alone for an employer who employed others on different work elsewhere was nevertheless working for an “undertaking in which” more than “four employees . . . had been . . . employed” within the meaning of s.27(1)(a) (*Kapur v. Shields* [1976] I.C.R. 26).

(12) “Undertaking” (E.E.C. Council Regulation No. 543/69, art. 14(8)). In cases where a sub-contractor hires out a driver to a transport undertaking it is the latter which is the “undertaking,” within the meaning of this article, required to keep and store certain driving records (*Auditeur du Travail v. Dufour* [1978] R.T.R. 186).

“Undertaking any business”: see UNDERTAKE.

Stat. Def., National Health Service Act 1977 (c. 49), s.57; Industrial Development Act 1982 (c. 52), s.17; Finance Act 1983 (c. 28), s.44(3); Co-operative Development Agency and Industrial Development Act 1984 (c. 57), Sched. 1, para. 2 (7).

“Undertaking . . . the tenor or effect of which is to restrict him as to his conduct or activities.” See IN RESPECT OF.

See LOCAL WORKS; UNDERTAKER.

UNDERTENANT. (1) See LEASE; TENANT; UNDERLEASE; *Lewis v. Baker* [1905] 1 Ch. 46, cited UNDERLEASE.

(2) Grant of right of way to lessee, “his executors, administrators, and assigns, undertenants and servants”: see *Baxendale v. North Lambeth Liberal Club* [1902] 2 Ch. 429, cited WAY; cp. *Keith v. Twentieth Century Club* 73 L.J. Ch. 549, cited FRIEND.

UNDERVALUE. (1) The sale of a reversion could not “be opened or set aside merely on the ground of undervalue” (s.1, Sale of Reversions Act 1867 (c. 4)); there had to be “fraud or unfair dealing” (*ibid*). But “it is obvious that the words ‘merely on the ground of undervalue’ do not include the case of an undervalue so gross as to amount of itself to evidence of fraud; and in *Aylesford v. Morris* (8 Ch. 490), Lord Selborne said that this Act ‘leaves undervalue still a material element in cases in which it is not the sole equitable ground for relief’ ” (*per Kay J., Fry v. Lane* 40 Ch. D. 312, cited FRAUD. See further *O’Connor v. Foley* [1905] 1 Ir. R. 1. See Law of Property Act 1925 (c. 20), s.174.

(2) Undervalue in a sale by a mortgagee must be so gross as to amount to evidence of fraud to justify setting aside the sale (*Davey v. Durrant* 26 L.J. Ch. 830; *Warner v. Jacob* 20 Ch. D. 220).

UNDERWOOD. (1) Generally speaking the term “underwood” is applied to a species of wood which grows expeditiously and sends up many shoots from one stool, the root remaining perfect from which the shoots are cut, and producing new shoots, and so yielding a succession of profits (*per* Bayley J., *R. v. Ferrybridge* 1 B. & C. 384; see further, *Note*, 379–383, *ibid.*). See **SALEABLE UNDERWOOD**.

(2) “Underwood is in the nature of a crop. It may be cut by the tenant at the periodical times which usage or the custom of the country has established, but not before or after those times (*Humphreys v. Harrison* 1 Jac. & W. 581; *Brydges v. Stephens* 6 Mad. 279)”; *Redman* (5th ed.), 244.

(3) “Cut as underwood”: see *Dashwood v. Magniac* [1891] 3 Ch. 306, cited **TIMBER**.

(4) As to what words in a lease amount to an exception of underwoods, see *Kenson v. Reading Cro.* Eliz. 244, cited **EXCEPTION**.

See **COPPICE**; **TREES**; **WOOD**.

UNDERWRITE. See **POLICY**.

(1) To “underwrite” shares does not mean to “place” them (see **TO PLACE**), but means “agreeing to take so many shares as are specified in the underwriting contract, if the public do not subscribe for them” (*per* Lindley L.H., *Re Licensed Victuallers’ Association* 42 Ch. D. 1), or, in other words, “to take an allotment of such part of the shares as should not be applied for by the public” (*per* Stirling J., *Re London–Paris Financial Corporation* 13 T.L.R. 331), or, “to ‘underwrite’ shares, involves an obligation take ‘at par’ so many as others do not take” (*per* Lindley L.J., *ibid.*, 13 T.L.R. 570, 571). See hereon *Re Harvey’s Oyster Co.* [1894] 2 Ch. 474.

(2) A company may (upon offering shares to the public) pay commission for underwriting its shares if so authorised by its articles and disclosed in the prospectus, and the amount or rate of commission authorised is not exceeded (s.8, Companies Act 1900 (c. 48), now Companies Act 1985 (c. 6), ss.97, 98). See hereon *Metropolitan Coal Consumers Association v. Scrimgeour* [1895] 2 Q.B. 604, and cases there distinguished; *Hilder v. Dexter* [1902] A.C. 474.

See **DISCOUNT**; **ON ALLOTMENT**; **SUBSCRIBE**. See further **APPLY**; **COMMISSION**; **OFFER**.

UNDERWRITER. See **UNDERWRITE**; **POLICY**. See further **LLOYDS**; also Assurance Companies Act 1909 (c. 49), s.29.

Stat. Def., Insurance Companies Act 1974 (c. 49), s.85; Insurance Companies Act 1982 (c. 50), s.96.

UNDISPOSED OF. (1) “Sum remaining undisposed of”: see *M’Cabe v. Galsworthy* [1874] W.N. 161.

(2) Property undisposed of by will (Administration of Estates Act 1925 (c. 23), s.34, Sched. I, Pt. II) includes property disposed of, but not effectually disposed of by will (*Re Harland-Peck* [1941] Ch. 182, 187–8).

See **LEFT**.

UNDISTRIBUTED. Assets of a company appropriated to the maintenance and development of the company’s property and the gradual paying off of its debentures under a scheme sanctioned under the Joint Stock Companies Arrangement Act 1870 (c. 104), were not “undistributed assets” within s.15(3), Companies

Winding-up Act 1890 (c. 63) (see Winding-up Rules 1949 (1949 No. 330, r. 199). (*Re Land Mortgage Bank of Florida* [1898] 1 Ch. 444.)

Cp. "surplus assets," under SURPLUS.

UNDIVIDED SHARES. (1) Partnership land is held in "undivided shares" for the purposes of the Law of Property Act 1925 (c. 20), First Schedule, Pt. IV (*Re Fuller's Contract* [1933] Ch. 652).

(2) "Undivided shares vested in possession": see *Re Stamford and Warrington* [1927] 2 Ch. 217.

"Undivided share" (s.2(10)(i), Settled Land Act 1882 (45 & 46 Vict., c. 38)): see LAND.

UNDUE DETENTION. "Undue detention," giving excusal or rights under a bill of lading, does not extend to a detention caused by the shipowner, or his agents or servants (*Searle v. Lund* 88 L.T. 863). See further DETENTION.

UNDUE EXPENSE. "Undue expense and risk" (Motor Vehicles (Authorisation of Special Types) General Order 1955 (No. 1038), art. 13.) The only expense and risk that can be considered is that of dividing the load. The added expense or risk of carrying the load when divided is irrelevant for the purposes of this article (*Gunter Brothers v. Arlidge* [1962] 1 W.L.R. 199).

UNDUE HARDSHIP. (1) "For a hardship to be 'undue' it must be shown, in my opinion, that the particular burden to the applicant to have to observe or perform the requirement is out of proportion to the nature of the requirement itself, and the benefit which the applicant would derive from compliance with it" (*per* O'Bryan J., in *Re Walsh* [1944] V.L.R. 147, 153).

(2) "Undue hardship" (Arbitration Acts 1934 (c. 14), s.16(6) and 1950 (c. 27), s.27). In considering what is undue hardship, the negligence of the seller or buyer in failing to take any steps to claim the arbitration as provided for by the agreement is a relevant circumstance (*Hookway & Co. v. Hooper & Co.* [1950] 2 All E.R. 842 n). But even if a claimant has been at fault himself it is an "undue hardship" on him if the consequences are out of proportion to his fault (*Watney Combe Reid & Co. v. Dower & Co.* [1956] 2 Lloyd's Rep. 325; *Liberian Shipping Corporation "Pegasus" v. King & Sons* [1967] 2 Q.B. 86). The defendant's conduct in misleading the plaintiffs into overlooking the strict time limit so that they lost their opportunity to claim a rent increase gave rise to an "undue hardship" within the meaning of section 27 (*S.I. Pensions Trustees v. Williams Hudson* (1977) 35 P. & C.R. 54).

UNDUE INFLUENCE. (1) Influence to be "undue," so as to vitiate a gift is of two classes according as the gift is (a) *inter vivos*; (b) testamentary.

(2) Gifts *inter vivos*—

(a) In gifts *inter vivos* a presumption against the gift arises in cases where subsists either of the following relationships: parent and child; doctor and patient; confessor and penitent; trustee and cestui que trust; or guardian and ward; but not brother and brother (*Glover v. Glover* [1951] 1 D.L.R. 675). Gifts *inter vivos* brought about by the influence of the superior in any such case will be void, unless the donee proves that the donor was placed "in such a position as would enable him to form an entirely free and unfettered judgment independent altogether of any sort of control" (*Archer v. Hudson* 13 L.J. Ch. 380; *Rhodes v. Bate* 1 Ch. 252; *Par-*

fitt v. Lawless L.R. 2 P. & D. 462). See hereon the leading case, *Huguenin v. Basely* 1 White & Tudor, 247; see further *Allcard v. Skinner* 36 Ch. D. 145, the observations of Bowen L.J., in which last case were applied in *Powell v. Powell* [1900] 1 Ch. 243; *Morley v. Loughnan* [1893] 1 Ch. 736.

(b) As regards parent and child, see *Re Coomber* [1911] 1 Ch. 174; *London & Westminster Loan Co. v. Bilton* 55 S.J. 198; see also *Inche Noriah v. Shaik Allie Bin Omar* [1929] A.C. 127.

(c) The presumption of undue influence by a mother over her daughter is not necessarily rebutted by the fact of the daughter having married and left home (*Lancashire Loans Ltd. v. Black* [1934] 1 K.B. 380).

(d) The presumption of undue influence extends to gifts by a woman to a man she is engaged to marry (*Re Lloyds Bank Ltd., Bomze and Lederman v. Bomze* [1931] 1 Ch. 289).

(e) But the presumption does not arise where the relationship is husband and wife (*Grigby v. Cox* 1 Ves. sen. 517; *Nedby v. Nedby* 21 L.J. Ch. 446; *Barron v. Willis* [1899] 2 Ch. 578, which case was reversed on another point, [1900] 2 Ch. 121; in House of Lords nom. *Willis v. Barron* [1902] A.C. 271; see also *Howes v. Bishop* [1909] 2 K.B. 390, explaining *Chaplin v. Brammall* [1908] 1 K.B. 233; *per* Farwell L.J., *Talbot v. Von Boris* 80 L.J.K.B. 666); though gifts by wife to husband may sometimes be regarded with jealousy (*Nedby v. Nedby* sup.). See also *Turnbull v. Duval* [1902] A.C. 429; *Bischoff's Trustee v. Frank* 89 L.T. 188; and where the wife is surrendering important property or rights at the request of her husband, she ought to have independent advice, and if she act without such advice the transaction will probably be set aside: see *Willis v. Barron* sup.; *Bank of Montreal v. Stuart* [1911] A.C. 120. Cp. IMPORTUNITY; DON.

(f) "Gifts *inter vivos* by a client to a solicitor are always void" (*per* Kindersley V.-C., *Tomson v. Judge* 24 L.J. Ch. 787, which case see for review of the previous authorities commencing with the leading case of *Welles v. Middleton* 1 Cox Ch. 112); and nothing but a prior severance of the confidential relation will save such gifts (*Morgan v. Minett* 6 Ch. D. 638); the rule is the same if the gift be to the wife of the solicitor (*Goddard v. Carlisle* 9 Price, 169; *Liles v. Terry* [1895] 2 Q.B. 679). See further *Barron v. Willis* sup. The rule as to "purchases" by a solicitor from his client is not so strict: see *Tomson v. Judge* sup. *Tomson v. Judge* was applied in *Wright v. Carter* [1903] 1 Ch. 57. See further *Haslam & Evans* [1902] 1 Ch. 765, and cases there cited.

(g) So there is no rule of law, "which says that a trustee shall not buy trust property from a cestui que trust (see CESTUI); but it is a well-known doctrine of equity that, if a transaction of that kind is challenged in proper time, a court of equity will examine into it, will ascertain the value that was paid by the trustee, and will throw upon the trustee the onus of proving that he gave full value, and that all information was laid before the cestui que trust when it was sold" (*per* Cairns C., *Thomson v. Eastwood* 2 App. Ca. 236, applied in *Dougan v. Macpherson* 4 Fraser [1902] A.C. 197).

(h) A guarantee given by A acting on behalf of a company consisting of himself and brother B and his father C, and obtained under an implied threat to prosecute B for an illegal forgery, the recipient of the guarantee knowing that A only gave the guarantee because he thought that the shock of B's prosecution would endanger the life of C, held obtained by undue influence and voidable. A contract so obtained remains voidable so long as the undue influence persists (*Mutual Finance Ltd. v. John Wetton & Sons Ltd.* [1937] 2 K.B. 389).

(j) Undue influence is not confined to cases in which the influence is exerted to

secure a benefit for the person exerting it, but extends also to cases in which a person of imperfect judgment is placed under the direction of one possessing greater experience or such force as that inherent in such a relation as that of father and child (*Bullock v. Lloyd's Bank* [1955] Ch. 317).

(k) A trustee who carries out a transaction in breach of trust with the beneficiary's apparent consent may still be liable if he knew or ought to have known that the beneficiary was acting under the undue influence of another, notwithstanding that the trustee received no benefit from the breach of trust (*Re Pauling's Settlement Trusts, Younghusband v. Coutts & Co.* [1964] Ch. 303).

(l) See also *Re Craig, Meneces v. Middleton* [1971] Ch. 95.

Cp. FRAUD; HARSH; UNCONSCIONABLE BARGAIN; UNDERVALUE.

(3) Testamentary gifts—

(a) But the law regarding testamentary gifts is very different. "The natural influence of the parent or guardian over the child, the husband over the wife, or the attorney over the client, may lawfully be exerted to obtain a will or legacy, so long as the testator thoroughly understands what he is doing and is a free agent. There is nothing illegal in the parent or husband pressing his claims on a child or wife, and obtaining a recognition of those claims in a legacy, provided that that persuasion stop short of coercion, and that the volition of the testator, though biased and impressed by the relation in which he stands to the legatee, is not overborne and subjected to the domination of another. 'The influence which will set aside a will,' says Mr. Justice Williams (*Wms. Exs.* (12th ed.) 32), 'must amount to force and coercion, destroying free agency; it must not be the influence of affection and attachment; it must not be the mere desire of gratifying the wishes of another, for that would be a very strong ground in support of a testamentary act; further there must be proof that the act was obtained by this coercion, by importunity which could not be resisted, that it was done merely for the sake of peace, so that the motive was tantamount to force and fear' " (*per Penzance J.O., Parfitt v. Lawless* L.R. 2 P. & D. 462).

(b) "In order to have something to guide us in our inquiries on this very difficult subject, I am prepared to say that influence in order to be 'undue' within the meaning of any rule of law which would make it sufficient to vitiate a will, must be an influence exercised either by coercion or by fraud. In the interpretation, indeed, of these words some latitude must be allowed. In order to come to the conclusion that a will has been obtained by coercion, it is not necessary to establish that actual violence has been used or even threatened. The conduct of a person in vigorous health towards one feeble in body, even though not unsound in mind, may be such as to excite terror and make him execute as his will an instrument which, if he had been free from such influence, he would have not executed. Imaginary terrors may have been created, sufficient to deprive him of free agency. A will thus made may possibly be described as obtained by coercion. So, as to fraud. If a wife, by falsehood, raises prejudices in the mind of her husband against those who would be the natural objects of his bounty, and by contrivance keeps him from intercourse with his relatives, to the end that these impressions which she knows he had thus formed to their disadvantage may never be removed—such contrivance may, perhaps, be equivalent to positive fraud and may render invalid any will executed under false impressions thus kept alive. It is, however, extremely difficult to state in the abstract what acts will constitute undue influence in questions of this nature. It is sufficient to say that, allowing a fair latitude of construction, they must range themselves under one or other of these heads, coercion or fraud" (*per Cranworth C., Boyse v. Rossborough* 6 H.L. Ca. 48, 49).

(c) So, in directing the jury in *Wingrove v. Wingrove* 11 P.D. 82, Hannen P., said—

“All men are familiar with the word ‘influence.’ They speak of one person having ‘unbounded influence’ over another, and they speak of good influences and evil influences; but there may be what is commonly called ‘unbounded influence,’ or there may be good influence or evil influence, and yet such influence may not be ‘undue’ in the legal sense of the word. There may be the immoral influence of a person of one sex over a person of the other sex which would result in the person subject to such influence yielding to it in a manner which would be very deplorable as regards testamentary disposition; or there may be the case of a person who in the relationship of companion to another of the same sex indulges the inclination of his or her friend for evil courses, and by that means obtains a pernicious influence over him in respect of the disposition of property; and yet it may be that in neither of these cases is there anything which the law would regard as ‘undue’ influence. To render influence legally ‘undue’ there must be coercion. A testator or testatrix may have been induced to make a will of which every disinterested person would disapprove, and yet that will may be in law a perfectly valid one. To establish undue influence, it must be shown that the testator or testatrix has been coerced to do an act which he or she did not desire to do. Of course this coercion may be of different kinds. To take an extreme case, there may be coercion with actual violence; or it may exist without anything of that sort. From advanced age, or from some other cause, a person may be so weakened that, upon a thing being pressed upon him, he becomes so fatigued in brain as to consent to do it, though it is an act with which his brain does not go. Influence which brings about the execution of a will by a person in such a condition will be ‘undue influence,’ because it will amount to coercion; but the fact of a person making a will being influenced in so doing by mistaken, or even immoral, considerations on his own part or on that of the person influencing him, would not be enough to invalidate a will. The state of things which is sufficient to establish undue influence must show that the will was not the expression of the will of the testator, but something which he has been made to represent as his will; and therefore, if it is shown that the testator’s own wishes are expressed in his will, the fact that the will is not such as would meet with approbation, or the fact that right-minded persons must condemn the conduct of the person influencing the testator to execute it, will not be enough to establish undue influence.

“There is another general proposition which I think is desirable to bring under your notice—namely, that in cases of undue influence it is not enough to show that the person charged with having exercised such influence had power over the mind of the testator, but it is necessary to prove that such power was exercised in the particular case, and that the testator was thereby induced to make the will.”

(d) See further *Baudains v. Richardson* [1906] A.C. 169, in which case the P.C. applied *Boyse v. Rossborough* (1856), 6 H.L.C. 2, and also the above direction of Hannen P., in *Wingrove v. Wingrove*; *Craig v. Lamoureux* [1919] W.N. 285.

(4) “Undue influence” (Representation of the People Act 1949 (c. 68), s.101(1)). If by some fraudulent scheme an elector is prevented from receiving the literature of one candidate his freedom of choice may be impeded and “undue influence” would have been exercised (*Roberts v. Hogg* 1971 S.L.T. 78).

English law grants relief where unfair contracts are entered into as a result of undue influence being used by one party against the other. The expression “undue influence” need not connote any wrongdoing on the part of the party benefiting from a transaction, but may be found to have been exerted once a special relationship has been found to exist, unless it is positively established that the duty of fidu-

ciary care has been entirely fulfilled (*Lloyds Bank v. Bundy* [1975] Q.B. 326, applying *Allcard v. Skinner* (1887) 36 Ch.D. 145, and *Tufton v. Sporni* [1952] W.N. 439). For other special relationship cases where agreements have been set aside on the grounds of inequality of bargaining power resulting in undue influence, see *Schroeder (A.) Music Publishing Co. v. Macaulay* [1974] 1 W.L.R. 1308, and *Davis (C.) Management v. W.E.A. Records* [1975] 1 W.L.R. 61.

UNDUE MEANS. “An award is procured by ‘undue means’ (s.2, Arbitration Act 1967 (c. 15)) if it is arrived at by a departure from natural justice in ascertaining the facts, as Wilson J., suggests in *Morgan v. Mather* 2 Ves. 18” (*per* Denman C.J., *Re Plews and Middleton* 6 Q.B. 852), *e.g.* as held in this last case, if the arbitrators carry on examinations separately instead of jointly.

UNDUE PREFERENCE. (1) “Undue preference” (s.8.(3)(i), Bankruptcy Act 1890 (c. 71)—see Bankruptcy Act 1914 (c. 59), s.26(3)(i)) includes every fraudulent preference, and “a good deal more” (*per* Lindley L.J., *Re Skegg* 25 Q.B.D. 505); if a bankrupt “interferes in any way in order to give an advantage to one creditor over the others, he is guilty of giving an undue preference,” within the section (*per* Esher M.R., *ibid.*; see further *Re Bryant* [1895] 1 Q.B. 420). See A; MOTIVE; VIEW.

(2) “Undue or fraudulent preference” (s.164, Companies Act 1862, (c. 89)—cp. Companies Act 1985 (c. 6), s.615) has no larger operation than the fraudulent preference of s.48, Bankruptcy Act 1883 (c. 52) (*Re Stenotyper Ltd.* [1901] 1 Ch. 250, cited FRAUDULENT PREFERENCE); see further *Re Gwawr-y-Gweithyr Industrial Society* [1901] 2 K.B. 482, cited SET-OFF. See s.44, Bankruptcy Act 1914 (c. 59); *Re Drage* 134 L.T. 765.

(3) “Undue or unreasonable preference or advantage,” “undue or unreasonable prejudice or disadvantage” (s.2, Railway and Canal Traffic Act 1854 (c. 31)). These words “must, it appears to me, be a preference or prejudice with reference to competing parties—an inequality, an unfairness with reference to others, or a prejudice to other works—and cannot apply to the suggestion that, because there are excessive charges, a prejudice arises” (*per* Huddleston B., *R. v. Railway Commissioners* 58 L.J.Q.B. 239, 240); see also s.55, Railway and Canal Traffic Act 1888 (c. 25).

(4) The “undue preference” (as regards the terms of supply of electrical energy) mentioned in s.20, Electric Lighting Act 1882 (c. 56), *semble*, connoted that there should be no infraction of the rule in s.19, *i.e.* that each consumer “shall be entitled to a supply on the same terms on which any other company or person, in such part of the area, is entitled under similar circumstances to a corresponding supply”, “is entitled” meant “entitled by arrangements” made with the supply company; the phrase “similar circumstances” gave a latitude in making bargains and was a question of degree, *e.g.* if one customer took largely a day load (which was the more beneficial to the supply company), he might be given somewhat more favourable terms than one who drew on the night load; “corresponding supply” did not mean that the supply company were, necessarily, to treat a small consumer upon equally advantageous terms as a large consumer (*per* Buckley J., *Metropolitan Electric Supply Co. v. Ginder* [1901] 2 Ch. 799); see also *A.-G. v. Hackney Corporation* [1918] 1 Ch. 372; see further *Long Eaton Urban Council v. A.-G.* [1915] 1 Ch. 124.

(5) “Undue preference . . . undue discrimination” (Electricity Act 1947 (c. 54), s.37(8)): preference or discrimination may be undue within the subsection not only because it is exercised for illegitimate reasons but also on the ground of excess (*South of Scotland Electricity Board v. British Oxygen Co.* [1956] 1 W.L.R. 1069.

Cost to the producer is a relevant consideration in determining questions of “undue discrimination” and “undue preference” (*British Oxygen Co. Ltd. v. South of Scotland Electricity Board* [1959] 1 W.L.R. 587). Discrimination may be “undue” even although not exercised for illegitimate reasons (*ibid.*). Where, in order to cover the greater capital and maintenance costs incurred, an electricity board charges a higher standing charge to the occupier of larger than average premises, it is not “undue discrimination” within the section (*London Electricity Board v. Springate* [1969] 1 W.L.R. 524).

UNDUE PRESSURE. (1) As to what undue pressure will be insufficient to vitiate an arrangement between parties, see *Barnes v. Richards* 71 L.J.K.B. 341. See also **PRESSURE**; cp. **DURESS**.

(2) A contract, though made and to be performed in a foreign country, will not be enforced in England if obtained by duress (*Kaufman v. Gerson* [1904] 1 K.B. 591).

UNDULY. (1) To do a thing “unduly” is to do something which, in the abstract, you may do yet which is done contrary to law or right; *e.g.* it is not so contrary, and an administrator does not “unduly prefer” his own debt within that phrase in his administration bond, if he exercises his right of retainer, even though, in the result, he thereby appropriates all the net assets, and leaves nothing for the other creditors (*Re Belham* [1901] 2 Ch. 52, approving *Davies v. Parry* [1899] 1 Ch. 602, and applying *Nunn v. Barlow* 2 L.J.(O.S.) Ch. 123). See **RETAIN**.

(2) By becoming a bankrupt on his own petition, a building contractor “unduly delays proper payment” to the persons supplying him with materials for the contract, within a clause in the contract enabling the employer to pay such persons himself (*Re Wilkinson* [1905] 2 K.B. 713).

(3) “Unduly burdensome” (Caravan Sites and Control of Development Act 1960 (c. 62), s.7(1)), means burdensome in a respect unnecessary or unreasonable in the particular circumstances (*Llanfyllin R.D.C. v. Holland* (1964) 62 L.G.R. 459). The justices must decide for themselves whether the burden imposed by the condition in the licence was outweighed by the resulting public benefit (*Cooper (Owen) Estates v. Lexden and Winstree R.D.C.* (1965) 63 L.G.R. 66; *Esdell Caravan Parks v. Hemel Hempstead R.D.C.* [1966] 1 Q.B. 895).

Cp. **DULY**.

UNEMANCIPATED. A statement in grounds of appeal that a pauper is “unemancipated” negatives every mode of emancipation (*R. v. Rothwell* 7 Q.B.D. 576, cited **EMANCIPATION**).

UNENCLOSED GROUND. (Street Betting Act 1906 (c. 43), s.1.) A cricket field which has well-maintained post-and-wire fences on all sides is not unenclosed ground to which the public, for the time being, have unrestricted access (*Foggo v. Hill* 1932 S.C. (J.) 6).

UNEXPIRED. (1) Lessee or assignee of “the unexpired residue, whatever it may be, of any term originally created for a period of not less than 60 years (whether determinable on a life or lives or not)” (s.5, Representation of the People Act 1867 (c. 102)); see *Trotter v. Watson* L.R. 4 C.P. 434.

(2) “Unexpired term” in Sched. III, Licensing (Consolidation) Act 1910 (c. 24), held to be a “word of art” and to mean the residue unexpired of the actually exist-

ing term for which the lessee or other tenant held the premises, and not to include the term of a reversionary lease to commence on the day next but one after the end of the existing lease or tenancy: see *Llangattock v. Watney & Co.* 79 L.J.K.B. 559. The date from which such unexpired term to be calculated held to be the day when the compensation was payable by the licence holder, *i.e.* 10th October: see *London County Council v. Watney & Co.* [1909] 1 K.B. 637. Cp. *Horton v. Penn* [1907] 1 K.B. 561.

See EXPIRATION.

UNFAIR. (1) (a) Unfair competition: see *Mogul Co. v. McGregor* 23 Q.B.D. 598, and *Ajello v. Worsley* [1898] 1 Ch. 274, both cited MALICE.

(b) R. 15 (c) of the rules of a trade union provided against “unfair competition” with regard to the renting of sites on fair grounds. A party to a dispute over the allocation of a site occupied it and refused to pay a fine imposed by the union committee; his action was held not to be “unfair competition” (*Lee v. Showmen’s Guild of Great Britain* [1952] 2 Q.B. 329).

(2) Fraud or unfair dealing: see FRAUD; *Brenchley v. Higgins* 70 L.J. Ch. 788.

(3) “Unfair” wear and tear is wear and tear not attributable to ordinary wear (*Boyer v. Warbey* [1953] 1 All E.R. 269).

(4) “Unfairly prejudiced” (Patents Act 1949 (c. 87), s.34(2)(d)(iii)): the termination of an existing licence and the refusal to grant a new one is obviously prejudicial to the licensee; whether it is unfair must be decided with reference to all the circumstances of the case. Where the licence was terminable at twelve months’ notice, any development of the invention concerned must be held in the absence of evidence to the contrary, to be an ordinary business risk taken with full knowledge of the possible consequences, and, therefore, refusal to grant a new licence was not “unfair prejudice” (*Re Kamborian’s Patent* (1961) 15 R.P.C. 403).

(5) “Unfairly prejudicial to the interest of . . . members” (Companies Act 1980 (c. 22), s.75(1) (now s.459 of the 1985 Act (c. 6)). Failure by a private company with ample cash resources to propound either a scheme of reconstruction enabling the dissentient petitioners to realize their minority shareholding, or to purchase such shareholding at its net asset value under ss.46, 47 of the Companies Act 1981 (c. 62) (now ss.162–164 of the 1985 Act) was not “unfairly prejudicial” to the petitioners under the provisions of this section; nor did those provisions extend to proposals or suggestions made to diversify the company’s business into unrelated activities (*In re a Company No. 004475 of 1982* [1983] Ch. 178). A company’s conduct was “unfairly prejudicial” within the meaning of this section only where it resulted in the member being unfairly prejudiced in his capacity as a member of the company (*Ib.*).

Stat. Def., Fair Trading Act 1973 (c. 41), s.34(2)(3).

See FAIR AND REASONABLE; UNREASONABLY.

UNFINISHED. “Buttons finished or unfinished” (Finance Act 1928 (18 & 19 Geo. 5, c. 17), s.9(1)): see *Newman Manufacturing Co. v. Marrable* [1931] 2 K.B. 297.

See MATERIALS.

UNFIT. (1) Bankruptcy renders a trustee “unfit” (*Re Roche* 1 Con. & L. 306). But if the power of appointing new trustees be worded “in case the trustee shall become incapable to act,” without the addition of the words “or unfit,” a bankrupt trustee is not within the description; for by “incapable” is meant “personal incapacity,” and not pecuniary embarrassment (*Re Watts* 20 L.J. Ch. 337; *Turner v. Maule* 15

Jur. 761; *Re East* 8 Ch. 735). Bankruptcy is none the less "unfitness" because occasioned by misfortune (*Re Adams* 12 Ch. D. 634; see also *Re Barker* 1 Ch. D. 43; *Re Hopkins* 19 Ch. D. 61); but on obtaining his discharge and ceasing to be impecunious, a bankrupt trustee is no longer "unfit" *Re Bridgman* 29 L.J. Ch. 844).

(2) Temporary absence abroad is not "unfitness" (*Re Moravian Society* 26 Bea. 101); *secus*, of a settled residence abroad (*Mesnard v. Welford* 22 L.H. Ch. 1053; in this case the word was "incapable").

(3) To impute that an overseer is "unfit to be trusted with money" is libel (*Cheese v. Scales* 12 L.J. Ex. 13).

(4) Parent "unfit to have the custody of the children" (s.7, Guardianship of Infants Act 1886 (c. 27)): clear proof of conduct of an aggravated character had to be forthcoming before the court would deprive a father of his natural guardianship of his children (*Woolnoth v. Woolnoth* 86 L.T. 598, distinguishing *Skinner v. Skinner* 13 P.D. 90); see further *Bagnall v. Bagnall* 54 S.J. 738.

(5) "Unfit for human habitation" (s.41, Manchester Corporation Water Works and Improvements Act 1867 (c. xxxvi)) included not only unfitness owing to some structural or other defect in the building, but unfitness for any reason, as, *e.g.* insufficient ventilation: see *Hall v. Manchester Corporation* 84 L.J. Ch. 732. See also FIT FOR, para. (2).

(6) A house is not necessarily "unfit for human habitation" because it fails to comply with the Public Health Act 1936, or byelaws made under it (*Birchall v. Wirrall U.D.C.* (1953), 117 J.P. 384).

(7) (Landlord and Tenant (War Damage) Act 1939 (c. 72), s.4). Business premises were unfit if business could not be carried on there owing to war damage notwithstanding that they could have been put right by the expenditure of a comparatively small sum (*Boudou v. Thornton-Smith* [1941] 1 K.B. 561). Cp. FIT.

(8) A bun containing metal (*J. Miller v. Battersea B.C.* [1955] 3 W.L.R. 559; and a loaf of bread containing string (*Turner & Son v. Owen* [1955] 3 W.L.R. 700); are not "unfit for human consumption" within s.9(1) of the Food and Drugs Act 1938 (c. 56) (see Food and Drugs Act 1955 (c. 16), s.8(1)). But an article of food which is going mouldy is *prima facie* unfit, whether or not there is evidence as to whether there would be any injury to health if it were eaten (*David Greig v. Goldfinch* [1959] L.G.R. 304). Food can be "unfit" within the meaning of this section even if it can be shown that there would be no ill effects from its consumption (*Greig (David) v. Goldfinch* (1961) 59 L.G.R. 304). See also UNWHOLESOME.

(9) A wife who eleven years and three years before marriage had been admitted to a mental hospital, for periods of four weeks and two weeks respectively, for the purpose of undergoing shock treatment, was not "unfitted for marriage and the procreation of children" within the meaning of s.9(1)(b)(ii) of the Matrimonial Causes Act 1965 (c. 72) (*Bennett v. Bennett* [1969] 1 W.L.R. 430).

"Unfit for human habitation." Stat. Def., Housing Repairs and Rents Act 1954 (c. 53), s.9.

"Unfit to drive through drink or drugs." Stat. Def., Road Traffic Act 1960 (c. 16), s.6(6).

See INABILITY; INCAPABLE; PAID OFFICER.

UNFORESEEN. (1) An "unforeseen calamity" in an exception excusing the employment of a music hall artist, does not arise by a sale of the hall by its mortgagees (*Phillips v. Hull Alhambra Co.* [1901] 1 Q.B. 59).

(2) "Unforeseen cause": see *Hills v. Sughrue* 15 M. & W. 253.

(3) (a) "Unforeseen circumstances," in an exception to a charterparty: see

Donaldson v. Little 10 Sess. Ca. (4th Ser.) 413. *Semble*, slackness of trade is not within the phrase (*Dickenson v. Fanshaw* 7 T.L.R. 576; affirmed 8 *ibid.* 217).

(b) “Unforeseen circumstances.” In relation to the frustration of the performance of a contract this means circumstances for which the contract makes no provision (*Tatem v. Gamboa* [1939] 1 K.B. 132; cp. *Leavey (J.) & Co. v. Hirst & Co.* [1944] K.B. 24).

(c) The words “unforeseen contingencies or circumstances excepted” as a proviso in a contract for the sale of goods, held not to protect the sellers from liability to deliver the goods: see *Wills v. Cunningham* [1924] 2 K.B. 220.

“Unforeseen obstacle”: see UNAVOIDABLE.

See INEVITABLE.

UNIFORM. Any item worn to show mutual association, in this case a black beret, can, subject to the de minimis rule, amount to a “uniform” contrary to the Public Order Act 1936 (c. 6), s.1(1) without proof of its previous use as such (*O’Moran v. D.P.P.*; *Whelan v. D.P.P.* [1975] Q.B. 864).

See CONSTABLE.

UNINCORPORATED ASSOCIATION. Because there was no mutual understanding between all the members, no mutual rights and obligations and no rules governing control, the Conservative and Unionist Central Office was not an “unincorporated association” and did not therefore fall under the definition of “company” in s.526(5) of the Income and Corporation Taxes Act 1970 (c. 10) (*Conservative and Unionist Central Office v. Burrell* [1982] 2 W.L.R. 522).

UNINCUMBERED. “Unincumbered vessel”: see *The Independence* 14 Moore P.C. 103; *The Grovehurst* [1910] P. 316, cited STATIONARY.

UNINSURED. “Warranted uninsured,” in a marine policy, was infringed by an honour policy, though such latter policy was void under Marine Insurance Act 1745 (c. 37) (*per Kennedy J.*, *Roddick v. Indemnity Insurance* [1895] 1 Q.B. 836); but this point was not necessary to the actual decision, and though that decision was affirmed in the Court of Appeal on other grounds, the ruling of Kennedy J., on this point was questioned ([1895] 2 Q.B. 380). See further as to this kind of warranty, *General Insurance of Trieste v. Cory* [1897] 1 Q.B. 335.

UNINTENTIONAL. An “unintentional” omission to pay the renewal on a patent means that the requirement was not present to the mind of the patentee, and does not include a case where he deliberately elected not to pay because he was under an erroneous, though bona fide, impression that it was not payable, see *Re Land* [1910] 2 Ch. 236.

See also ACCIDENTAL; CARELESSLY; FORGETFULNESS; INADVERTENCE; MISTAKE; NEGLIGENCE.

UNION. (1) “Union,” for poor law purposes (Poor Removal Act 1861 (c. 55), s.1; Poor Law Amendment Act 1834 (c. 76), s.109): see *Machynlleth v. Pool* L.R. 4 Q.B. 592; *R. v. Bristol* 13 Q.B. 405; *R. v. Priest Hutton* 17 Q.B. 59. See further *Bootle v. Whitehaven* [1903] 2 Ch. 142.

(2) “Any union,” however formed, could be dissolved under s.11, Divided

Parishes and Poor Law Amendment Act 1876 (c. 61): see *Local Government Board v. South Stoneham* [1909] A.C. 57. See also RELIEF.

See TRADE UNION.

UNION MEMBERSHIP AGREEMENT. A “union membership agreement” (Trade Union and Labour Relations Act 1974 (c. 52), s.30(1)) included an agreement which contained a condition that the employee should be required to join a specified trade union. It was not essential that the agreement should confer on the employee an option to join a union of his choice (*Home Counties Dairies v. Woods* [1977] I.C.R. 463).

UNIT. “Unit of employment” (Industrial Relations Act 1971 (c. 72), ss 38–42). For every “unit of employment” there had to be an employer. Self-employed writers whose works were used by the BBC were not employed by the BBC, even if the work was commissioned, and their activities therefore could not be regarded as giving rise to a “unit of employment” (*Writers’ Guild of Great Britain v. British Broadcasting Corporation, The Times*, September 28, 1973).

“Unit of employment.” Stat. Def., Industrial Relations Act 1971 (c. 72), s.37(6).

“Units of electricity”: see Electricity Supply Act 1922 (12 & 13 Geo. 5, c. 46), s.7.

UNIT TRUST. Stat. Def., Charging Orders Act 1979 (c. 53), s.6.

“Unit trust scheme.” Stat. Def., Prevention of Fraud (Investments) Act 1958 (c. 45), s.26(1).

UNITED KINGDOM. (1) The United Kingdom is a union of England and Wales (Laws in Wales Act 1536 (c. 3)) with Scotland, forming Great Britain (Union with Scotland Act 1706 (c. 11), and Northern Ireland (Union with Ireland Act 1800 (c. 67); Government of Ireland Act 1920 (c. 67)).

(2) So, apart from interpretation clauses, the use of “United Kingdom” in statutes shows that only Great Britain and Northern Ireland, and not the Channel Islands or Isle of Man, are included therein: see BEYOND SEAS; BRITISH ISLANDS; BRITISH NEWSPAPER; HOME-TRADE SHIP; STATION; Merchant Shipping Act 1894 (c. 60), s.4(1)(a)(b). See further *Re Johnson* [1903] 1 Ch. 834.

(3) But its popular meaning may be wider. “I have no hesitation in saying that Jersey is, in popular language, a part of the United Kingdom” (*per* Mathew J., *Stoneham v. Ocean Railway & General Insurance* 19 Q.B.D. 239). That was a case on a policy which gave an insurance against “any bodily injury caused by any external accident happening within the United Kingdom ‘or on the continent of Europe,’ or whilst proceeding from one European port to another in a decked vessel”; the insured was drowned off Jersey, and it was held that the insurer was liable on the policy. But Cave J., in giving his judgment said, “Some light is thrown on this question by one of the conditions indorsed on the policy: ‘this policy shall be void if the assured shall travel beyond the limits of Europe, or shall embark in any vessel with the intention of going beyond such limits.’ That provision means that the policy shall be in force ‘in Europe,’ and Jersey is in Europe.” *Semble*, therefore, that the dictum that Jersey is comprised in “United Kingdom” was either not necessary to the decision, or otherwise that it was so controlled by the context. If this be not the explanation then it seems difficult to reconcile the dictum with the decision of all the judges present in Easter Term 1832, whereby it was held that “United Kingdom,” in s.76, Larceny Act 1827 (c. 29) (where the phrase stands unaffected by the

context), did not include Jersey (*R. v. Prowes* 1 Moody, 349; see on this case *R. v. Madge* 9 C. & P. 29).

(4) “United Kingdom” in commercial documents such as policies of insurance does not include the Channel Islands unless there is evidence to show a contrary meaning (*Navigators and General Insurance Co. v. Ringrose* [1962] 1 W.L.R. 173).

(5) “Matter or thing done or to be done in any part of the United Kingdom”: see *Maple v. Inland Revenue Commissioners* [1908] A.C. 22, cited TO BE DONE.

(6) A British ship on the high seas is not part of the territory of the United Kingdom, and a crime committed in her is not committed in the United Kingdom within s.41 of the Army Act 1881 (c. 58) (*R. v. Gordon-Finlayson, Ex p. An Officer* [1941] 1 K.B. 171).

(7) A gift in a will “to promote the defence of the United Kingdom” is a valid charitable gift, and refers to the United Kingdom as constituted from time to time (*Re Driffl* [1950] Ch. 92).

(8) “United Kingdom passport” (Commonwealth Immigrants Act 1962 (c. 21), s.1(3)) does not cover a passport issued to a citizen of the United Kingdom and Colonies by the government of a colony which had been established by the royal prerogative (*R. v. Secretary of State for Home Department, ex p. Bhurosah* [1968] 1 Q.B. 266).

Stat., Interpretation Act 1978 (c. 30), Sched. 1.

UNITED STATES. The term “United States” in the United States Carriage of Goods by Sea Act 1936, s.13, includes the Panama Canal Zone (*Stafford Allen & Sons v. Pacific Steam Navigation Co.* [1956] 1 W.L.R. 629).

UNITY. (1) Unity of persons, *e.g.* husband and wife, on which see *Earle v. Kingscote* [1900] 2 Ch. 585, cited NEED NOT.

(2) “Unity of possession” is where a man has two estates or rights in land and holds them both in his own hands (Cowel; Jacob). See hereon *Pyer v. Carter* 26 L.J. Ex. 258, cited NECESSARY; *Barnes v. Loach* 4 Q.B.D. 494; *Watts v. Kelson* 6 Ch. 166; *Kay v. Oxley* L.R. 10 Q.B. 360, and *Bayley v. Great Western Railway* 26 Ch. D. 434, all cited RIGHT; *Thomson v. Waterlow* L.R. 6 Eq. 36; *Langley v. Hammond* L.R. 3 Ex. 161; *Barkshire v. Grubb* 18 Ch. D. 616; and *Brown v. Alabaster* 37 Ch. D. 490, all cited WAYS.

(3) Unity of possession or ownership of dominant and servient tenements precludes a prescriptive right to an easement: see PRESCRIPTION.

UNIVERSAL HEIR. “What we call ‘executor and residuary legatee’ is, in the civil law, ‘universal heir.’ . . . The proper term, in the civil law, as to goods, in *hæres testamentarius*, and ‘executor’ is a barbarous term unknown to that law; therefore, a person named as ‘universal heir’ in a will, in my opinion, would have a right to” probate (*per Hardwicke C., Androvin v. Poilblanc* 3 Atk. 299).

UNIVERSITY. (1) The word “university” is not a word of art and whether or not an educational institution can claim to be a university or not must depend on whether an ordinary man of good education of university standard would consider that the institution in question is one. The fact that an institution possesses all or most of the essential qualities of a university does not necessarily prove that it is a university. The onus of proving that an institution is a university must lie upon the claimant (*St. David’s College, Lampeter v. Ministry of Education* [1951] 1 All E.R. 559).

(2) "University," in a Cambridge Rating Act, held to mean the university for the time being, so as to include colleges incorporated into the university after the Act (*Downing College v. Purchas* 3 B. & Ad. 162).

Stat. Def., Universities of Oxford and Cambridge Acts 1877 (c. 48), s.2, and 1923 (c. 33), Sched.; National Health Service Act 1946 (c. 81), s.79(1); Finance Act 1972 (c. 41), Sched. 5, Group 6; Sex Discrimination Act 1975 (c. 65), s.82; Race Relations Act 1976 (c. 74), s.78; Value Added Tax Act 1983 (c. 55), Sched. 6, Group 6.

See COLLEGE; EMOLUMENT; PROFESSOR.

UNJUST. (1) Scales and weights were not "light or unjust" (s.3, Weights and Measures Act 1859 (c. 56) if an inaccuracy in them was against the seller (*Brooke v. Shadgate* L.R. 8 Q.B. 352). If scales or a weighing machine became, e.g. by wear, affected so as to require adjustment and to effect such adjustment something was added, they or it might not have been "unjust" (*London & North Western Railway v. Richards* 2 B. & S. 326; *Great Western Railway v. Baille* 34 L.J.M.C. 31, cited CORRECT); *secus*, if imperfect, and only to be rectified by a temporary adjustment (*Carr v. Stringer* L.R. 3 Q.B. 433).

(2) A weighing machine is "false or unjust" within s.25, Weights and Measures Act 1878 (c. 49), s.16, Weights and Measures Act 1963 (c. 31), if paper is, however honestly, placed under its scoop causing the machine to indicate a weight of the commodity sold greater by the weight of the paper than its own weight (*Lane v. Rendall* [1899] 2 Q.B. 673; see hereon *R. v. Baxendale* 44 J.P. 763; *Horder v. Roberts* *ibid.* 256). Cp. *Great Western Railway v. Bailie* *sup.* And the acquiescence or request of the purchaser is immaterial (*London County Council v. Payne* [1904] 1 K.B. 194); but a trade usage of weighing the paper with a commodity is admissible evidence to disprove a charge, under s.26 *sup.*, that a fraud was "wilfully committed" (*King v. Spencer* 91 L.T. 470). Honestly using a machine, correct in itself, in a particular way for a particular purpose and with the knowledge of the purchaser, is not within s.25 (*Withall v. Francis* 42 J.P. 612). See further *Crick v. Theobald* 64 L.J.M.C. 216, cited TRADE; *London County Council v. Payne* [1905] 1 K.B. 410; cp. *Stone v. Tyler* [1905] 1 K.B. 290, cited USING.

(3) "Unjust or oppressive" (Fugitive Offenders Act 1881 (c. 69), s.10; Fugitive Offenders Act 1967 (c. 68), s.8(3)). It was held that it would have been "unjust or oppressive" to have granted extradition in a case where the offence had been committed more than nine years previously (*R. v. Brixton Prison Governor, ex p. Narayan Singh* [1962] 1 Q.B. 211). See also *Armah v. Government of Ghana* [1968] A.C. 192). It is not "unjust or oppressive" to return a fugitive offender to India when he is charged with forgery, even though he alleges that as he has been branded as a political spy he would not be given a fair trial (*R. v. Governor of Brixton Prison, Ex p. Mubarak Ali Ahmed* [1952] 1 T.L.R. 964). In deciding whether it would be unjust or oppressive to return a fugitive the court can only have regard to circumstances relevant to the particular ground or grounds on which the application for release is based, and where, as here, the ground put forward was passage of time the court could not have regard to the question whether or not it would be unjust or oppressive to return him for some other reason (*R. v. Governor of Pentonville Prison, ex p. Narang* [1978] A.C. 247). See also *Kakis v. Governor of the Republic of Cyprus* [1978] 1 W.L.R. 799 and *Re Tarling* [1979] 1 W.L.R. 1417.

(4) "Unjust" (Criminal Justice Act 1967 (c. 80), s.40(1)). The activation of a suspended sentence under this section is "unjust" within the meaning of the section where the new offence is comparatively trivial and, particularly, where it is in a dif-

ferent category from that for which the suspended sentence was imposed (*R. v. Moylan* [1970] 1 Q.B. 143).

UNJUSTIFIABLE. As to what was “unjustifiable extravagance in living” (s.28(3) (d), Bankruptcy Act 1883 (c. 52): see *Ex p. Thornber, Re Barlow* [1886] W.N. 207.

UNKNOWN. See CONTENTS UNKNOWN; QUANTITY AND QUALITY UNKNOWN; CLEAN BILL OF LADING; GOOD ORDER.

UNLAWFUL. A thing may be unlawful in two senses, (1) as unenforceable by law, (2) as punishable by law; *e.g.* an agreement for sexual immorality would furnish no right of action between the parties, but is not punishable (*per* Bramwell B., *Cowan v. Milbourn* L.R. 2 Ex. 236). Cp. ILLEGAL; ULTRA VIRES; UNLAWFUL GAMING.

UNLAWFUL ASSEMBLY. “Three or more may commit an unlawfull assembly, a riot, or a rout” (Co. Litt. 257 a). Cp. REBELLION.

See RIOT; ROUT.

UNLAWFUL COPIES. “Unlawful repetitions, copies, and imitations” (s.11, Fine Arts Copyright Act 1862 (c. 68)) was a “phrase not well considered, but it means copies, etc., wrongfully made, *i.e.* without the necessary consent” (*per* Esher M.R., *Tuck v. Priester* 19 Q.B.D. 629; see hereon *Pollard v. Photographic Co.* 40 Ch. D. 345).

See COPY.

UNLAWFUL DISCRIMINATION. (1) “Unlawful . . . to discriminate” (Sex Discrimination Act 1975 (c. 65), s.29(1)). The practice of the owners of a wine bar not to serve women standing at the bar where they served men, was held to be “unlawful” discrimination under this section, notwithstanding that they served women in another part of the premises (*Gill v. El Vino Co.* [1983] Q.B. 425). It was also held to be unlawful discrimination under this section for a friendly society to bar, by its rules, women members from becoming delegates to the governing body of the society; in that the society was “concerned with the provision” of facilities by way of insurance (*Jones v. Royal Liver Friendly Society, The Times*, December 2, 1982).

(2) “Unlawful . . . to discriminate” (Race Relations Act 1976 (c. 74), s.4(2)). The manager of an amusement centre who was dismissed for refusing to carry out his employer’s instruction not to admit blacks was unlawfully discriminated against within the meaning of this section (*Showboat Entertainment Centre v. Owens* [1984] 1.C.R. 65).

See also PROVISION.

UNLAWFUL GAMING.

See GAMING.

UNLAWFUL POSSESSION. See POSSESSION.

UNLAWFUL PURPOSE. An “unlawful purpose” within s.4, Vagrancy Act 1824 (c. 83) means the intention to commit (as distinguished from having been actually guilty of, *R. v. Simpson* 15 L.P. 246, 790) an offence punishable criminally, and as distinguished from what is only immoral, *e.g.* fornication (*Hayes v. Stevenson* 3 L.T. 296); but it is immaterial whether that intention is intended to be carried out in

the place where the offender is found (*Re Joy* 22 L.T.O.S. 80). See hereon *Kirkin v. Jenkins* 32 L.J.M.C. 140. Cp. UNLAWFULLY.

UNLAWFUL SEXUAL INTERCOURSE. (Sexual Offences Act 1956 (c. 69), s.17(1)) means “illicit,” *i.e.* outside the bond of marriage (*R. v. Chapman* [1959] 1 Q.B. 100).

UNLAWFULLY. (1) “Unlawfully” is used exceptionally in a wide general sense as regards conspiracy; but its ordinary import is an act which is “forbidden by some definite law”; and does not embrace that which is merely immoral (*per* Stephen J., *R. v. Clarence* 22 Q.B.D. 23; see also judgment of Wills J.). But an act which would give a right to a judicial separation would be done “unlawfully” (*ibid.*). See further MALICE. Cp. UNLAWFUL PURPOSE; UNLAWFUL.

(2) (a) The offence of “unlawfully and wilfully” coursing, etc., or killing or wounding “any deer kept or being in the unclosed part of any forest, chase, or purlieu” (s.12, Larceny Act 1861 (c. 96)), was not committed if the act was done outside the limits of the forest, chase, or purlieu, though it was on neighbouring land where the alleged offender had no right and though the deer had just come from its haunt in the forest; for “unlawfully” there, did not mean in contravention of the rights of a private individual, but of the criminal law of the land; as regards the phrase “kept or being,” the section meant that the act had to be done in the unclosed part of the forest, chase, or purlieu, and that it was criminal if done there in respect of a deer which was either “kept” there by the owner of the forest, etc., or which happened “to be” there; and the alleged offender showed that he “came lawfully by such deer” the carcass of which might be found in his possession (s.14) if he showed that he had not “unlawfully” killed it within s.12 (*Threlkeld v. Smith* [1901] 2 K.B. 531).

(b) The criminal offence of “unlawfully and wilfully” killing a house dove or pigeon (s.23, Larceny Act 1861 (c. 96)) was not committed if it was killed in the honest idea of protecting crops, although to do so might have been actionable (*Taylor v. Newman* 32 L.J.M.C. 186; see further *R. v. Stimpson* 32 L.J.M.C. 208), but it was no defence that the defendant believed the pigeon was a wild one: see *Horton v. Gwynne* [1921] 2 K.B. 661; distinguished *Farey v. Welch* [1929] 1 K.B. 388. “Unlawfully and wilfully” in this section meant “intentionally and without a lawful excuse.” An honest mistake was no defence (*Cotterill v. Penn* [1936] 1 K.B. 53). In the very next section of the same Act, relating to taking fish, “unlawfully and wilfully” meant “unlawfully and intentionally”; for that section created an offence in the nature of poaching (*Hudson v. McRae* 33 L.J.M.C. 65). See WILFUL AND MALICIOUS; WILFULLY.

(3) (a) The criminal offence of “unlawfully and maliciously” killing, maiming or wounding any dog, bird, beast, or other animal (s.41, Malicious Damage Act 1861 (c. 97)), was not committed by placing poisoned flesh in an enclosed garden to kill a dog habitually straying there (*Daniel v. Janes* 2 C.P.D. 351), nor by shooting fowls which were damage feasant (*Smith v. Williams* 37 S.J. 11). So, to shoot a dog when it was believed to be necessary for the protection of your own, or your master’s, property, was not to “unlawfully and maliciously” kill it, within this section (*Miles v. Hutchings* [1903] 2 K.B. 714); so, of setting a trap in a garden to catch cats trespassing there (*Bryan v. Eaton* 40 J.P. 213). See also Protection of Animals Act 1911 (c. 27), s.1.

(b) The criminal offence of “unlawfully and maliciously” damaging property (s.51, Malicious Damage Act 1861 (c. 97)) was not committed unless the act was

wilful (*R. v. Pembliton* L.R. 2 C.C.R. 122); but wilfulness was implied if the act was reckless and the damage its natural consequence (*R. v. Welch* 1 Q.B.D. 23), or the damage was excessive even if the act was done under a bona fide claim of right (*R. v. Clemens* [1898] 1 Q.B. 556).

(4) “Unlawfully and maliciously wound or inflict any grievous bodily harm” (s.20, Offences Against the Person Act 1861 (c. 100)): see WOUND; INFLICT; GRIEVOUS BODILY HARM.

(5) The expression “unlawfully fail” in an information was held to be capable of covering failure through negligence to comply with the requirements of the Road Traffic Act 1930 (c. 43), s.49, of making a vehicle keep to a particular line of traffic when directed to do so by a police constable (*Pontin v. Price* 150 L.T. 177).

Stat. Def., Protection of Aircraft Act 1973 (c. 47), s.1(6).

UNLESS. (1) “Unless,” in a clause in a marine policy “free from average unless general,” has the same meaning as “except” (*Wilson v. Smith* 3 Burr. 1556).

(2) “Unless” is probably of like value as “except” in creating a condition precedent (see *Re Dickinson, Ex p. Rosenthal* 51 L.J. Ch. 736).

(3) Held not to be equivalent to “until” (*Welch v. Royal Exchange Assurance* [1939] 1 K.B. 294).

(4) A lessee’s covenant not to do a thing “unless” he makes a stipulated payment gives him permission to do the thing on making the payment (*per Pollock C.B., Legh v. Lillie* 30 L.J. Ex. 27); so, if the word were “under” a stipulated payment, or “except” the payment be made (*ibid.*).

(5) But “unless the Local Government Board otherwise direct” (s.175, Public Health Act 1875 (c. 55)) did not enable the Board to order that land compulsorily acquired under s.176 be used for a purpose inconsistent with that for which it was acquired; the phrase simply qualified the exigency of s.175 in compelling an immediate sale of land not required for the purpose for which it was acquired (*A.-G. v. Hanwell* [1900] 2 Ch. 377). See further *A.-G. v. Pontypridd* [1906] 2 Ch. 257; but see Public Health (Amendment) Act 1907 (c. 53), s.95, which qualified ss.175, 176, Public Health Act 1875 (c. 55), and enabled a local authority (with the approval of the Local Government Board) to appropriate land it might have acquired to other purposes than those for which it was acquired, if not required for those purposes.

(6) “Unless he shall have paid all such rates” he shall not be put on the burgess list (Municipal Corporations Act 1835 (c. 76), s.9) meant that the payment must have been the person’s own act (*R. v. Bridgnorth* 2 P. & D. 317).

(7) “Unless” the bishop shall be of a contrary opinion: see *per Esher M.R., R. v. London (Bishop)* 24 Q.B.D. 213.

(8) “Unless the contrary appears”: see *Re Highett and Bird* [1903] 1 Ch. 287, cited CONTRARY.

(9) “Unless he attempts to . . . become bankrupt.” For the meaning of these words in a will, see *Re Evans* [1920] 2 Ch. 304.

(10) “Unless error or fraud can be proved”: see *Royal Commission on Sugar Supply v. Hartlepool Seaton S.S. Co.* [1927] 2 K.B. 419. See further ERROR.

(11) “Unless the Court of Appeal shall enlarge the time,” within the old R.S.C., Ord. 58, r. 15: see *Re Wigfull & Sons’ Trade Mark* [1919] 1 Ch. 52.

(12) “Unless the court otherwise directs” (Courts Act 1971 (c. 23), s.11(1)). These words do not empower the court to direct that a sentence shall take effect from a date earlier than that on which it was imposed (*R. v. Gilbert* [1975] 1 W.L.R. 1012).

(13) “Unless there shall be no qualified pilot to be obtained”: see *per* Esher M.R., *The Carl XV* [1892] P. 324, 330.

UNLIKELY. (1) (Marine Insurance Act 1906 (c. 41), s.60(2)): connotes a degree of probability somewhere between mere uncertainty and inevitability (*Court Line v. R.* 61 T.L.R. 418, 424).

(2) “Unlikely to recover” means that there is a definite balance of probability that the person will not recover (*Davis v. Davis* [1943] S.A.S.R. 203).

UNLIQUIDATED DAMAGES. See LIQUIDATED DAMAGES; CREDITOR.

UNLIQUIDATED DEMAND. See LIQUIDATED DEMAND.

UNLIQUIDATED DEBT. (Bankruptcy Act 1914 (c. 59), Sched. 1, para. 9.) Prima facie all cases of damages to be ascertained by a jury are in the nature of unliquidated debts; and a claim is not any the less a claim for unliquidated damages because a figure has been set on the damages for the purposes of another part of the claim (*Re Rickett, Ex p. Insecticide Activated Products v. Official Receiver* [1949] 1 All E.R. 737).

UNLOADING. (1) The person carrying on the “process of unloading” within reg. 41 of the Docks Regulations 1934 (No. 279) was held not to be the shipowner but the stevedore or dock authority (*Mullis v. United States Lines Co.* [1969] Lloyd’s Rep. 109).

(2) The cleaning of spillage after the bagged cargo of castor seed has been removed from the hold was “unloading” within the meaning of the Docks Regulations 1934 (No. 279) (*Mace v. Green (R.H.) and Silley Weir* [1959] 2 Q.B. 14).

(3) “Unloading of vessels” (Standard Industrial Classification, Order XIX, Minimum List Heading 705) means only the discharge from the vessel of its cargo, and did not cover all the procedures involved in controlling the import up to the time the cargo left the quay (*Colton Controllors (Liverpool) v. Secretary of State for Employment and Productivity* [1969] 2 Lloyd’s Rep. 323).

See LOAD.

UNMARRIED. (1) The primary meaning of “unmarried” is “never having been married,” or “without ever having been married” (*Clarke v. Colls* 9 H.L. Ca. 601; *Dalrymple v. Hall* 16 Ch. D. 715; *Re Sergeant* 26 Ch. D. 575); but it is a word of flexible meaning, and “slight circumstances, no doubt, will be sufficient to give the word its other meaning” of “not having a husband, or wife, at the time in question” (*per* Pearson J., *Re Sergeant* sup.), so as to exclude only the marital right. In *Re Lesingham* (24 Ch. D. 703) this secondary meaning was attached to the word as used thus, “upon trust to pay unto J. H., spinster, if she be then ‘sole and unmarried’.” So, of the phrase “sole and intestate” (*Hardwick v. Thurston* 4 Russ. 380).

(2) The primary meaning of “unmarried” is “not having been married” (*Soutar’s Trustees v. Spence* 1937 S.L.T. 207; *Re Reilly* [1935] I.R. 352). The secondary meaning is “having no spouse living” at the material time. The addition of the words “without issue” makes it necessary to give the words the secondary meaning (*Re Reilly* sup.).

(3) The secondary sense was also attached to “unmarried” in the following cases—*Clarke v. Colls* sup.; *Pratt v. Mathew* 25 L.J. Ch. 409, 686; *Re Gratton* 5 W.R. 795; *Blagrove v. Coore* 27 Bea. 138; *Mitchell v. Colls* 29 L.J. Ch. 403; *Day v.*

Barnard 30 L.J. Ch. 220; *Re Sanders* L.R. 1 Eq. 675, followed in *Re King* 62 L.T. 789; *Re Chant* [1900] 2 Ch. 345, *Re Jones* [1915] 1 Ch. 246; *Re Ellis's Settlement* [1921] 1 Ch. 230.

(4) In *Maberley v. Strobe* 3 Ves. 452, Arden M.R., dealing with “unmarried,” as used in the Poor Relief Act 1691 (c. 11), s.7, said “the legislature meant by ‘unmarried,’ ‘not having a wife at the time’; but that is not the usual construction of that word in a will.”

(5) But the primary meaning was adhered to in—*Blundell v. De Falbe* 57 L.J. Ch. 576; *Heywood v. Heywood* 30 L.J. Ch. 155; *Dalrymple v. Hall* sup.; *Re Sergeant* sup.; *Norris v. Barber* [1873] W.N. 180; *Re Thistlethwayte* 24 L.J. Ch. 712; *Bell v. Phyn* 7 Ves. 458; *Re Fanshawe* 48 S.J. 525; *Roberts v. Kilmore (Bishop)* [1902] 1 Ir. R. 333.

(6) Bequest to A’s “next of kin in blood, as if A had died unmarried,” means A’s nearest of kin (*Halton v. Foster* 3 Ch. 505, cited NEXT OF KIN).

(7) When a legacy is given to a daughter, who at the date of the will has never been married, and the gift is conditional upon the legatee being “unmarried” at a given time, the word “unmarried” may properly be construed “a spinster,” and not “a widow” (*Re Saunders* 3 K. & J. 156).

(8) A gift to an “unmarried” person does not mean that he is to remain unmarried (*Jubber v. Jubber* 9 Sim. 503; *Hall v. Robertson* 23 L.J. Ch. 241; see further Wms. Exs. (13th ed.) 696). In *Hall v. Robertson* it was held that a testamentary gift to A for life, and, at his death, “to his son and unmarried daughters as he may by will direct,” meant in the case of daughters, those who were unmarried at the date of the gift.

(9) “So long as she ‘continues’ unmarried” is not equivalent to “during widowhood,” and a divorced woman, if remaining unmarried, continues entitled (*Knox v. Wells* [1883] W.N. 58). A gift to E (a married woman, but who at the date of his will and of his death was living with the testator as his wife), “during such time as she should remain unmarried,” was held by North J., to be valid, the words meaning during such time as she should remain in the same state as she was whilst living with the testator (*Re Burlinson* 107 L.T. 82).

(10) If donee shall die “unmarried or intestate”: see *Lightburne v. Gill* 3 Brown P.C. 250, cited INTESTATE.

(11) A gift of dividends to a woman “during widowhood” cannot be for longer than her life, because the status of widowhood must determine with the life of the widow; but if the gift be “so long as she remain single and unmarried,” then, *semble*, it is an absolute gift of the corpus: see *Rishton v. Cobb* 9 L.J. Ch. 110; *Re Howard* [1901] 1 Ch. 412; see also *Re Mason* [1910] 1 Ch. 695, in which case, however, there was a gift over, which fact made a difference.

See WITHOUT HAVING BEEN MARRIED; FEME; SPINSTER.

UNMARRIED DAUGHTERS. In a gift to a testator’s “five unmarried daughters,” the words “unmarried daughters” are the material words; he only had three daughters in all, two of whom were unmarried; those two took to the exclusion of the third who was married (*Re Dutton* [1893] W.N. 65).

UNMERCHANTABLE. Stat. Def., Sale of Goods Act 1979 (c. 54), s.15(3).

UNNECESSARY. See NECESSARY. An act, *e.g.* one executor leaving assets in the sole control of his co-executor, is not “unnecessary” if done in the regular course of business (*Re Gasquoine* [1894] 1 Ch. 470).

UNNECESSARY DANGER. An exception in a policy against accidental death, after an enumeration of things obviously dangerous, added—"or otherwise wilfully, wantonly, or negligently, expose himself to any unnecessary danger"; held, that the insured (who was of a strong constitution, a good swimmer, and accustomed to cold water) had not courted "unnecessary danger" by bathing in deep water from a boat on a cold and stormy evening in April, whereby he was drowned (*Phillips v. General Accident Assurance* 34 Sc. L.R. 47).

UNNECESSARY INCONVENIENCE. A right to pull down a house in such manner and time as not to cause "unnecessary inconvenience" (s.85(3), Metropolitan Building Act 1854 (c. 122) involved no obligation to protect the privacy of rooms exposed by the pulling down (*Thompson v. Hill* L.R. 5 C.P. 564).

See DEMOLISH; TAKE DOWN.

UNNECESSARY INTERFERENCE. Proviso, in a mining lease, that the working of the coal should "not be prevented or unnecessarily interfered with": see *Munday v. Rutland* 23 Ch. D. 81.

UNNECESSARY OBSTRUCTION. A car left in the road so as to cause an obstruction is not an "unnecessary obstruction" within the meaning of reg. 95 of the Motor Vehicles (Construction and Use) Regulations 1969 (No. 321) (Motor Vehicles (Construction and Use) Regulations 1973 (No. 24), reg. 114) if it is only left for a reasonable time. In this case from 2.45 p.m. to 4 p.m. was considered reasonable (*Evans v. Barker* [1971] R.T.R. 453). Obstruction of a road by the car of a doctor on an emergency call was held to be an "unnecessary obstruction" within the meaning of reg. 114 (*Wade v. Grange* [1977] R.T.R. 417).

UNNECESSARY PROCEEDING. See IMPROPER.

UNNECESSARY RISK. The duty of an employer to guard an employee against unnecessary risk is a duty not to subject the employee to any risk which the employer can reasonably foresee, and which he can guard against by any measures, the convenience and expense of which are not entirely disproportionate to the risk involved (*Harris v. Brights Asphalt Contractors* [1953] Q.B. 617).

UNOCCUPIED. (1) "Unoccupied" (Public Health Act 1875 (c. 55), s.211(2)): see *Southend-on-Sea v. White* 83 L.T. 408 and *Gaze v. Wren* 87 L.T. 27, cited OCCUPATION.

(2) A house provided by the church for its minister does not become "unoccupied" within the meaning of s.17 of the General Rate Act 1967 (c. 9) if it remains empty for a year between appointments of ministers (*Bexley Congregational Church Treasurer v. London Borough of Bexley* [1971] 3 All E.R. 289).

UNPAID. A covenant to pay interest at a certain rate so long as the principal secured or any part of it remains "unpaid," does not exclusively mean payment in cash; "unpaid," in that connection, means due under the covenant; and when a judgment has been obtained for the principal, the covenant merges in the judgment and the principal is no longer "unpaid" under the covenant (*Ex p. Fewings, Re Sneyd* 25 Ch. D. 338). See hereon MERGER; *Economic Life Assurance v. Usborne* [1902] A.C. 152, cited UNTIL.

See PAYMENT.

UNPAID SELLER. As to “unpaid seller,” in s.44, Sale of Goods Act 1893 (c. 71), see *Mordaunt v. British Oil & Cake Mills* [1910] 2 K.B. 502, cited **ABSENT**.
Stat. Def., Sale of Goods Act 1979 (c. 54), s.38.

UNQUALIFIED. See **INFAMOUS CONDUCT**; **MEDICAL**, see further *Davies v. Makuna* 29 Ch. D. 596; **PRACTISE**; **QUALIFIED**; **SOLICITOR**; **WILFULLY AND FALSELY**.

“Unqualified person” (Solicitors Act 1957 (c. 27), s.18). The rule that no unqualified person shall act as a solicitor applies to an individual, not to a firm. The fact that one partner allowed his practising certificate to lapse, thereby dissolving the partnership by virtue of s.34 of the Partnership Act 1890 (c. 39), did not mean that the firm, or the other partners, became “unqualified persons” within the meaning of this section (*Hudgell Yeats & Co. v. Watson* [1978] Q.B. 451).

UNREASONABLE. (1) Where a statute gives justices power to determine whether proposed works by a local authority are “unreasonable,” they have power to determine that the works ought not to be done at all, as well as to control the mode of doing works which they do not condemn (*Sheffield v. Alexander* 63 L.J.M.C. 206; see further *Mansfield v. Butterworth* [1898] 2 Q.B. 274, cited **INSUFFICIENT**). Cp. **APPORTION**.

(2) It is not “unreasonable” of a local authority in giving permission for the opening on Sunday of a cinema to attach a condition prohibiting the admission of children under the age of 15 (*Associated Provincial Picture Houses v. Wednesbury Corporation* [1948] Ch. 223).

(3) “Unreasonable” (Private Street Works Act 1892 (c. 57), s.7(d)) means “unreasonable” on any ground other than insufficiency, coupled possibly with the further exception of unreasonableness on the ground of undue expenditure (*Southgate Borough Council v. Park Estates (Southgate)* [1954] 1 Q.B. 359).

(4) “Unreasonable in character or extent” (Housing Act 1964 (c. 56), s.27(2)(b)). A notice requiring the landlord to build a bathroom by way of an extension was not a request to do work “unreasonable in character or extent” (*Harrington v. Croydon Corpn.* [1968] 1 Q.B. 856).

(5) “Unreasonable . . . in the particular circumstances of the case” (Legal Aid and Advice Act 1949 (c. 51), s.1(6)). In deciding whether it is reasonable to pursue interlocutory proceedings, a legal aid committee can properly take into account the prospects of success in the action as a whole (*R. v. Legal Aid Committee No. 1 (London) Legal Aid Area, ex p. Rondel* [1967] 2 Q.B. 482).

(6) It was held not to be “unreasonable” within the meaning of the Animals Act 1971 (c. 22), s.5(3)(b) to allow a guard dog to roam freely on securely enclosed premises, but see now the Guard Dogs Act 1975 (c. 50) (*Cummings v. Grainger* [1977] Q.B. 397).

UNREASONABLE CONDUCT. (1) Where the Registrar of Restrictive Trading Agreements did not admit the claim of the registered suppliers that improperly fitted goods have a medically detrimental effect on users, and as a result suppliers adduced medical evidence which was substantially uncontradicted, the Registrar was guilty of “unreasonable conduct” within r. 76 of the Restrictive Practices Court Rules 1957 (No. 603) (*Re Footwear Reference (No. 2)* [1968] 1 W.L.R. 1355).

(2) “Unreasonable conduct” (Industrial Court Rules 1971 (S.I. No. 1777) (L. 36), r. 69). Employers, who should have seen that there was sufficient evidence to support the verdict of an industrial tribunal, and who appealed against that verdict on the grounds that there was insufficient evidence to support it, and who sub-

sequently withdrew their appeal, were guilty of unreasonable behaviour within the meaning of this rule (*J. & H. Smith v. Smith* [1974] I.C.R. 156).

(3) “Unreasonable conduct in conducting the proceedings” (Employment Appeal Tribunal Rules 1976 (No. 322), r. 21(1)). A party’s failure to attend the hearing of an appeal to an appeal tribunal was held to be “unreasonable conduct in conducting the proceedings” within the meaning of this rule (*Croydon v. Greenham (Plant Hire)* [1978] I.C.R. 415).

UNREASONABLE DELAY. “Unreasonable delay” (s.31, Matrimonial Causes Act 1857 (20 & 21 Vict., c. 85)): see *Beauclerk v. Beauclerk* [1891] P. 189; [1895] P. 220; *Brougham v. Brougham* [1895] P. 288; *Johnson v. Johnson* [1901] P. 193. The phrase here meant culpable delay, something in the nature of acquiescence (*Lowe v. Lowe* [1952] P. 376). See also *McLeish v. McLeish* [1950] V.L.R. 280.

UNREASONABLE PREFERENCE. See **UNDUE PREFERENCE.**

UNREASONABLY. (1) When a covenant by a lessee against assigning or underletting without consent is qualified by the condition that such consent shall not be “unreasonably” or “arbitrarily” or “vexatiously” withheld, a breach of such a condition gives no right of action to the lessee; his remedy is to assign or underlet without consent (*Sear v. House Property Co.* 16 Ch. D. 387; *Treloar v. Bigge* L.R. 9 Ex. 151; *Hyde v. Warden* 47 L.J. Ex. 127); or, when an unreasonable term is sought to be imposed, the lessee may bring an action for a declaration of its unreasonableness, and for an order that he may assign without further consent (*Young v. Ashley Gardens Co.* [1903] 2 Ch. 112). See also *Andrew v. Bridgman* [1905] 1 K.B. 596, cited FINE; and where no other relief is asked the declaratory order will generally be granted with costs: see *West v. Gwynne* [1911] 2 Ch. 1, cited FINE, overruling on this point *Jenkins v. Price* [1906] 1 Ch. 10 (inf.), and *Evans v. Levy* [1910] 1 Ch. 452; *Gardner & Co. v. Cone* 140 L.T. 72. In *Treloar v. Bigge* (where the phrase was “arbitrarily”), the majority of the court intimated that a refusal grounded on an expectation that the property would shortly be compulsorily taken by a public body, was not arbitrary. So, a licence to assign was not withheld “arbitrarily,” nor “without good and sufficient reason,” where the proposed assignee was the Salvation Army “General” Booth, even though he swore that the premises were to be used for offices only (*Bridewell Hospital v. Fawkner* 8 T.L.R. 637); see further *Lepia v. Rogers* [1893] 1 Q.B. 31.

(2) So, there is no unreasonable withholding of consent if the lessor (after making inquiries) is not satisfied with responsibility of the proposed sub-lessee (*Porter v. Gibbons* 48 S.J. 559). So (*semble*, as of general application) the lessor “is not unreasonable in asking for what purpose a proposed under-tenant is going to use the premises, and in stipulating for a covenant between the under-tenant and himself with regard to under-letting similar to that which already exists between himself and his own tenant,” and that is certainly so where the lessor himself occupies part of the premises (*per* Swinfen Eady J., *Berger v. Jenkinson* [1905] 1 Ch. 456).

(3) A landlord does not unreasonably withhold his consent to a proposed assignment of part of the demised premises if he reasonably apprehends that the fact of the assignment (however the assignee) will detract from the letting value of the rest of the premises (*Premier Confectionery (London) Co. v. London Commercial Sale Rooms Ltd.* [1933] Ch. 904). It is not unreasonable for a landlord to withhold consent to an assignment because he does not want the user of the premises changed (*Wilson v. Fynn* [1948] 2 All E.R. 40); nor is it unreasonable of a landlord to want

to prevent the creation of a statutory tenancy (*Swanson v. Forton* [1949] Ch. 143; *Dollar v. Winston* [1950] Ch. 236).

(4) It is unreasonable to withhold consent "in order to enable the lessor to regain possession of the premises before the termination of the lease," even though he wants the premises for his own use and is willing to give as much for the lessee's interest as the proposed assignee (*Bates v. Donaldson* [1896] 2 Q.B. 241, settles the question raised, but not decided, in *Lehmann v. McArthur* 3 Ch. 496). See further *Re Wimpey and Chatterton's Agreement* [1921] 2 Ch. 7.

(5) Consent to a subletting is not "unreasonably" withheld if the landlord refuses to consent because the tenant proposes to take a premium in consideration for a reduction in the subtenant's rent (*Re Town Investments Underlease, McLaughlin v. Town Investments* [1954] Ch. 301).

(6) So, it is unreasonable to withhold consent unless the lessor agrees that he, or his proposed assignee, will pay to the lessor "any future increase of rates, taxes, charges, assessments or impositions whatsoever assessed or imposed in consequence of the said assignment," even though it be a case in which, under the letting, those burdens are to be borne by the lessor (*Young v. Ashley Gardens Co. sup.*). In this last case, Williams L.J., said, "the landlord is not bound to give any reason for refusing his licence." See also *Ideal Film Renting Co. v. Nielson* [1921] 1 Ch. 575.

(7) *Semble*, it is unreasonable to refuse a licence to assign by a husband to his wife of a leasehold he has purchased unless he covenants to pay the rent reserved by and perform all the stipulations contained in the lease under which the premises are held: see *Evans v. Levy sup.*

(8) But consent cannot be withheld at all until it is asked for; and (where there is an appropriate forfeiture clause) a forfeiture will be worked by an assignment or underlease without the lessor's consent being asked, even though such omission was *per incuriam* and though a refusal would have been "unreasonable," "arbitrary," or "vexatious" (*Barrow v. Isaacs* [1891] 1 Q.B. 417; *Eastern Telegraph Co. v. Dent* [1899] 1 Q.B. 835).

(9) See further, as to when consent is unreasonably withheld, *Re Gibbs and Houlder Bros. & Co. Ltd's Lease* 94 L.J. Ch. 312.

(10) "Consent not to be unreasonably withheld" (Landlord and Tenant Act 1927 (c. 36), s.19(1)); it was not for the parties to restrict the ambit of s.19(1), by stipulating what should be deemed to be unreasonable (*Re Smith's Lease* [1951] 1 T.L.R. 254). It was unreasonable to withhold consent to an underlease to someone entitled to diplomatic privilege (*Parker v. Boggon* [1947] K.B. 346).

(11) A refusal to give a licence to assign a public house to a brewery company because the lessor desires it to be kept as a "free house," is not so unreasonable as that the title (affected by such a refusal) will be forced on a purchaser (*Re Marshall and Salt* [1900] 2 Ch. 202); so it is not unreasonable to refuse to assign a public-house to a company, where the lease provides that the lessee shall reside on the premises and personally conduct the business (see *Jenkins v. Price* [1908] 1 Ch. 10; but see *West v. Gwynne* [1911] 2 Ch. 1, cited FINE; see also *Edmond v. Reid* 9 Macph. 782, cited RESIDE). Cp. *Wilmott v. London Road Car Co.* [1910] 2 Ch. 525, cited RESPONSIBLE.

(12) "Unreasonably refuse." A mine-owner who insisted that a mining lease should contain a covenant to work diligently should not "unreasonably refuse" to grant it within s.4 of the Mines (Working Facilities and Support) Act 1923 (c. 20) (*Glassbrook Brothers Ltd. v. Leyson* [1933] 2 K.B. 91).

(13) (Settled Land Act 1925 (c. 18), s.24.) For an example of a bankrupt tenant

for life unreasonably refusing, within the section, to exercise his Settled Land Act powers, see *Re Thornhill's Settlement* [1941] Ch. 24.

(14) "Unreasonably refuses or neglects" (National Insurance Act 1911 (c. 55), s.11(2)): see *Rushton v. Skey & Co. Ltd.* [1914] 3 K.B. 706.

(15) "Consent unreasonably withheld" (Adoption Act 1950 (c. 26), s.3(1)(c); Adoption Act 1958 (c. 5), s.5(1)(b); Children Act 1975 (c. 72), s.12(1)(b)). A father, deserted by his wife because of his criminal activities, and who had tried but failed to obtain custody of their child, was not acting "unreasonably" in refusing his consent to the child's adoption (*Re K. (An Infant)* [1953] 1 Q.B. 117). A mother who consents to her child being adopted and then, before the order is made, withdraws that consent has not necessarily by so doing "unreasonably" withheld it (*Watson v. Nikolaisen* [1955] 2 Q.B. 286). It could not be unreasonable to withhold consent to the adoption of a child whom the parents knew and loved and were able and willing to bring up themselves (*Re F.* [1957] 1 All E.R. 819). The primary consideration is the reasonableness of the mother or father's attitude to the child, and their conduct as parents (*Re C. (L.)* [1965] 2 Q.B. 449; *Re W.* [1965] 1 W.L.T. 1259). A mother may be withholding her consent "unreasonably" although her conduct is in no way culpable (*Re W. (An Infant)* [1971] A.C. 682). The withholding of consent to adoption by a parent of a legitimate child is not "unreasonable" unless the welfare of the child overwhelmingly requires adoption (*Re B. (A minor) (Adoption by Parent)* [1975] Fam. 127). The withholding of consent by a confirmed homosexual father was held to be unreasonable and was therefore dispensed with under the powers to do so conferred by this section (*Re D. (An Infant) (Adoption: Parents Consent)* [1977] A.C. 602). The court must look to the attitude of the natural parent as a relevant factor in deciding whether consent to the adoption has or has not been "unreasonably" withheld. If at the time of the hearing the parent appears as someone capable of caring for the child that was a factor to be taken into account, as well as the ultimate welfare of the child (*Re H.*; *Re W.* (1983) 13 Fam. Law 144).

(16) "Unreasonably refused" (Redundancy Payments Act 1965 (c. 62), s.2(4)), see *Taylor v. Kent County Council* [1969] 2 Q.B. 560; *Collier v. Smiths Dock Co.* [1969] 2 Lloyd's Rep. 222; *Morganite Crucible Co. v. Street* [1972] 1 W.L.R. 918, cited *SUITABLE*.

(17) A local education authority is not necessarily "proposing to act unreasonably" within the meaning of the Education Act 1944 (c. 31), s.68 (as amended) just because the Secretary of State disagrees with the proposals (*Secretary of State for Education and Science v. Tameside Metropolitan Borough Council* [1977] A.C. 1014).

(18) "Unreasonably objects" (Mental Health Act 1959 (c. 72), s.52(3)(c)). In determining whether the nearest relative has acted 'unreasonably' within the meaning of this section the proper test is not what that relative, but what a reasonable person in that relative's place, would do in all the circumstances (*W. v. L. (Mental Health Patient)* [1974] Q.B. 711).

(19) "Unreasonably refused" (Employment Act 1980 (c. 42), s.4(2)). A union which had not participated in the hearing before the industrial tribunal, and which then had sought to adduce evidence on appeal, was held by the Employment Appeal Tribunal to have "unreasonably refused" an application for membership within the meaning of this section (*National Graphical Association v. Howard*, *The Times*, July 23, 1983).

"Unreasonably refused to provide a written statement" (Employment Protection Act 1975 (c. 71), s.70(4)), see *REFUSE*.

See ASSIGN; RESPONSIBLE; UNDERLEASE. Cp. REASONABLY; ARBITRARILY.

UNREGISTERED COMPANY. (1) "Unregistered company" (s.199, Companies Act 1862 (c. 89)): see *Re Torquay Bath Co.* 32 Bea. 581; *Bowes v. Hope Insurance* 11 H.L. Ca. 389; *Re London Indiarubber Co.* 1 Ch. 329; *Re Bank of London* 6 Ch. 421; Buckl. (12th ed.) 722, (etc.); JOINT STOCK COMPANY. See also *R. v. Tankard* [1894] 1 Q.B. 548.

(2) A friendly society which has not been registered under the Friendly Society's Acts or any other Acts, may be compulsorily wound up by the court as an unregistered company under ss.267 and 268, Companies (Consolidation) Act 1908, (c. 69) (see Companies Act 1948 (c. 38), s.398); see *Re Victoria Society, Knottingley* [1913] 1 Ch. 167.

UNREPRESENTED CAPITAL. See CAPITAL.

UNRESTRICTED. The right to close parts of land, to exclude the public from it and to charge for admission is not inconsistent with the "free and unrestricted use" of the land by the public (*Burnell v. Downham Market Urban District Council* [1952] 2 Q.B. 55).

UNROADWORTHY. See UNSAFE.

UNSAFE. (1) "Port 'unsafe' in consequence of war, disturbance, or any other cause" in an exception clause in a bill of lading "does not mean unsafe at the moment, but means unsafe for a period which would involve inordinate delay" (*per Loreburn C.*); and "or any other cause" is to be read as *ejusdem generis* with the preceding words: see *Knutsford S.S. v. Tillmanns* [1908] A.C. 406, cited INACCESSIBLE. See SAFE PORT.

(2) "Unsafe or unroadworthy condition." A vehicle which is unsafe is unroadworthy and vice versa. "Unroadworthy" implies the same state in relation to a road vehicle as "unseaworthy" does to a vessel (*Barrett v. London General Insurance Co.* [1935] 1 K.B. 238).

(3) An exemption clause in a car insurance policy providing that the insurers would not be liable while the car was being driven in an "unsafe or unroadworthy condition" was held not to apply to a car which was overloaded (*Clarke v. National Insurance and Guarantee Corporation Ltd.* [1963] 2 W.L.R. 1396).

(4) "Unsafe or unsatisfactory" (Criminal Appeal Act 1968 (c. 19), s.2(1)(a)). In deciding whether to quash a conviction on the ground that the verdict is "unsafe or unsatisfactory," the Court of Appeal must ask itself the subjective question whether there is not some lurking doubt in the minds of its judges. This is a reaction which may not be based strictly on the evidence, but can be produced by the general feel of the case. The argument that the jury had the advantage of seeing and hearing the witness is no longer conclusive (*R. v. Cooper (Sean)* [1969] 1 Q.B. 267). When considering on appeal, whether a conviction is "unsafe or unsatisfactory" in the light of fresh evidence, it is not established as a rule of law that the court must decide what they think the jury might or would have done if they had heard that evidence. Where the Court of Appeal has no doubt of the appellant's guilt, it cannot be argued that the conviction should nevertheless be quashed if the court thinks a jury might reasonably take a different view (*Stafford v. D.P.P.; Luvaglio v. D.P.P.* [1974] A.C. 878).

"Unsafe ship." Stat. Def., Merchant Shipping Act 1894 (c. 60), s.459(1).

UNSATISFIED. (1) "Unsatisfied judgment" (s.98, County Courts Act 1846 (c. 95)): see *Abley v. Dale* 20 L.J.C.P. 233; *Cookman v. Rose* 3 Jur. N.S. 866.

(2) "Judgment still unsatisfied," in County Court Rules 1903–1904, Ord. 26, r. 1: see *White v. Stenning* [1911] 2 K.B. 418.

UNSEAWORTHY. (1) "Unseaworthy," in a contract of carriage: see *Becker, Gray & Co. v. London Assurance Corporation* [1918] A.C. 101.

(2) "Unseaworthy," in a marine insurance policy: see *Fireman's Fund Insurance Co. v. Western Australia Insurance Co. Ltd.* 43 T.L.R. 680.

(3) "Unseaworthiness": see *Werner v. Bergensk Dampskibsselskab* 42 T.L.R. 265; *Rio Tinto Co. Ltd. v. Seed Shipping Co. Ltd.* 42 T.L.R. 381; *The Carron Park* 15 P. 203 (open valve); *Dobell & Co. v. Steamship Rossmore Co. Ltd.* [1895] 2 Q.B. 408 (defective porthole); *McFadden v. Blue Star Line* [1905] 1 K.B. 697 (defective valve); *The Diamond* [1906] P. 282 (danger of fire from stove); *The Schwan* [1909] A.C. 450 (defective cock); *Virginia Carolina Chemical Co. v. Norfolk and North American Steam Shipping Co.* [1912] 1 K.B. 229 (inadequate protection against fire); *Fiumana Docieta Di Navigazione v. Burge & Co. Ltd.* [1930] 2 K.B. 47 (defective bunker coal).

(4) "To satisfy the definition of unseaworthiness it must exist at the commencement of the voyage. It must, however, still be in effective operation at the time of the casualty, and from its very nature it must always, or almost always, operate by means of and along with the specific immediate peril. That is because the essence of unseaworthiness as a cause of loss or damage is that the unseaworthy ship is unfit to meet the peril" (*per* Lord Wright, in *Monarch Steamship Co. v. A/B Karlshamns Oljefabriker* [1949] A.C. 196, 226).

See SEAWORTHY.

UNSECURED. "Unsecured debts provable": see *Re E. A. B.* [1902] 1 K.B. 457, cited DEBT.

UNSERVED. An oral statement that heifers were "unserved" was held to override a written condition exempting a vendor from liability for errors of description (*Couchman v. Hill* [1947] K.B. 554).

UNSETTLED ESTATE. "It cannot be denied that in common parlance the phrase 'unsettled estate' means an estate not put into settlement; and drawing a distinction between its popular meaning and its legal signification, if taken in the former, it would be confined to an estate not put into settlement, while in the latter it is equally open to either interpretation, because it may be either so much of the interest in the settled lands which was not bound by the settlement that was intended to be passed, or the lands which had never been put into settlement. The words in their legal signification will include both." "In all cases the courts adopt one general rule, whether the words are 'unsettled,' 'out of settlement,' 'not put into settlement,' or 'not settled in jointure'; they say, we will give to the devisee whatever interest the testator had the power to dispose of in the lands bound by the settlement or jointure, giving to the words their full legal signification" (*per* Sugden C., *Incorporated Society v. Richards* 4 Ir. Eq. Rep. 192, 194).

See NOT SETTLED.

UNSHIPPING. (1) Merely hiring in England a vessel to carry smuggled goods to Ireland where they were unshipped: held, "not assisting or being otherwise con-

cerned in the unshipping” of the goods, within s.45, Customs Act 1825 (c. 108) (*A.-G. v. Kenifeck* 6 L.J. Ex. 214). See further CONCERNED IN.

(2) “Shipping and unshipping of goods” (Harbours, Docks and Piers Clauses Act 1847 (c. 27), s.33). The owners of tugs which bring in and take out vessels engaged in the shipping and unshipping of goods are themselves so engaged within the meaning of this section and cannot therefore be excluded from bringing vessels into a dock on the Humber (*J. H. Pigott & Son v. Docks and Inland Waterways Executive* [1953] 1 Q.B. 338).

See TO SHIP.

UNSOLICITED. Stat. Def., Unsolicited Goods and Services Act 1971 (c. 30), s.6.

UNSOUND MIND. (1) “ ‘Unsound mind,’ or *insanæ memoriæ*, which all persons must understand to be a depravity of reason, or want of it” (*per* Hardwicke C., *Barnsley’s Case* 2 Eq. Ca. Ab. 580). Mere eccentricity is not such an unsoundness of mind as will amount to testamentary incapacity (*Pilkington v. Gray* [1899] A.C. 401). “There is an important difference between ‘unsoundness of mind’ and ‘dullness of intellect.’ . . . Unsoundness of mind may arise from perversion of the mental powers, and may exhibit itself by means of delusions or strong antipathies, which is called ‘mania’; or it may arise from what may be termed a defect of mind, as where the mind was originally incapable of directing itself to anything requiring judgment, which is ‘idiotcy’; or where a mind, originally strong, has become weakened by illness or age though producing no such insanity as to amount to mania.” Idiotcy, “in general, is very easily proved. It is manifested in a variety of ways—by impropriety or indecency of conduct, dirtiness in the habits, or by vacancy of aspect, though this last test can only be appreciated by those who have seen the party. Another test is by means of numbers, *i.e.* by showing that the party cannot understand the commonest rules of arithmetic” (*per* Wood V.-C., *Harrod v. Harrow* 23 L.T.O.S. 243). See IDIOT. See further *Hope v. Campbell* [1899] A.C. 1; Mental Deficiency Act 1927 (c. 33), s.1. By s.20(5) of the Mental Treatment Act 1930 (c. 23), the phrase “person of unsound mind” is to be substituted for the word lunatic.

(2) “Person of unsound mind” (Mental Treatment Act 1930 (c. 23), s.20(5)) has the same meaning as “lunatic” in the earlier Acts and is something more radical than an emotional disturbance requiring psychiatric treatment (*Re Buxton v. Jayne* [1960] 1 W.L.R. 783).

(3) Person of unsound mind (Trustee Act 1850 (c. 60), s.2) included an apoplectic person whose mind was thereby weakened (*Re Critchley* 83 L.T. 167), or one incapacitated by old age, or by infirmity of mind, *e.g.* from paralysis (*Re Martin* 34 Ch. D. 618, overruling *Re Phelps* 31 Ch. D. 351), but the paralysis had to be such as to produce mental infirmity (*Re Barber* 39 Ch. D. 187). See LUNATIC; *cp.* INABILITY; UNFIT.

(4) The power which by the old Divorce Court Rules, r. 196, was given to the Registrar of assigning a guardian *ad litem* to a person of “unsound mind” could only be exercised in the case of a lunatic so found by inquisition (*Fry v. Fry* 34 S.J. 250). See Matrimonial Causes Rules 1968 (No. 219/L.4), r. 1739, where “patient” is used instead of “person of unsound mind.”

(5) “Incurably of unsound mind” (Matrimonial Causes Act 1950 (c. 25), s.1(1)(d), Matrimonial Causes Act 1965 (c. 72), s.1(1)(a)(iv)). A spouse is “incurably of unsound mind” if he or she is of such mental incapacity as to make normal married life impossible and there is no prospect of any improvement in mental

health which would make this possible in future (*Whysall v. Whysall* [1959] 3 W.L.R. 592). "Unsound mind" in these sections covers a person who is congenitally and incurably feeble-minded or mentally subnormal so as to be incapable of managing himself and his affairs (*Robinson v. Robinson* [1965] P. 192). It does not cover a mental defective, that is one in a state of arrested or incomplete development of mind (*Woolley v. Woolley (By her Guardian)* [1968] P. 29).

(6) "Unsound mind" (Matrimonial Causes Act 1965 (c. 72), s.9(1)(b)(i)) means the same as "insanity" in s.9(1)(b)(iii) (*Bennett v. Bennett* [1969] 1 W.L.R. 430).

(7) The unsoundness of mind which by s.31(2) of the Limitation Act 1939 (c. 21), as amended by the Law Reform (Limitation of Actions, etc.) Act 1954 (c. 36) extends the three year limitation period for personal injury actions, is similar to that described in R.S.C., Ord. 80, r. 1, a condition making it impossible for the plaintiff to manage his own affairs (*Kirby v. Leather* [1965] 2 Q.B. 367).

UNSOUNDNESS. See **SOUND**.

UNSTAMPED. See **STAMPED**.

UNTIL. (1) This word may be read either as inclusive or exclusive (*R. v. Stevens* 5 East, 244, inf.; cp. **FROM**); it is generally inclusive.

(2) In a memorandum enlarging the time within which an award may be made, "until" will generally include the whole of the day named (Russ. on Arb. (8th ed.), 102, citing *Kerr v. Jeston* 1 Dowl. N.S. 538; *Knox v. Simmonds* 3 Bro. C.C. 358; see further *Pugh v. Leeds* 2 Cowp. 714). So, it seems that, as a general rule, the word "till" is inclusive of the day to which it is prefixed; so that where a defendant was given "till" a certain day to plead, judgment signed on such day for want of a plea was bad, as the defendant might have delivered a plea during such day (*Dakins v. Wagner* 3 Dowl. 535; see also *Kerr v. Jeston* sup.) And the rule is the same in the case of the word "until" (*Isaacs v. Royal Insurance* L.R. 5 Ex. 296). So, where a bankrupt was protected from process "until the 29th July," that protection extended during the whole of that day (*Bellhouse v. Mellor* 28 L.J. Ex. 141).

(3) But a plaintiff having obtained a judgment, but with a stay of execution "until" a stated day, was held (in Ireland) entitled to issue his execution on that day if the money was not then paid (*Rogers v. Davis* 8 Ir. L.R. 399), in that case Burton J., said, "I think 'until' does not mean 'after.' " So, in the time of Charles II, it was held that a release of all trespasses or of all demands "until" a stated date, did not include the day of that date (*Nichols v. Ramsel* 2 Mod. 280) See further *Wicker v. Norris* Ca. t. Hard. 116.

(4) In an indictment, "until" is either inclusive or exclusive of the day to which it is applied according to the context and subject-matter (*R. v. Stevens* 5 East, 244).

(5) In a lease "until Michaelmas," that feast day is included (3 Leon. 211).

(6) A mortgage of property "until" the mortgage debt and agreed interest are paid, remains effective although the personal covenant to pay may be merged in a judgment; therefore, even after a judgment for the debt, the agreed interest remains secured on the property (*per Lord Davey, Economic Life Assurance v. Osborne* [1902] A.C. 152, cited **MERGER**). Cp. **UNPAID**.

(7) In a trust in favour of a wife to operate after her husband's death "until she shall marry again," the words quoted were held to be words of futurity and not to apply where the wife, after being divorced from her husband, remarried in his lifetime (*Re Monro's Settlement* [1933] Ch. 82).

(8) In wills, the word "until" is in general coupled with a condition or con-

tingency indicating that some change is intended in the disposition of the property, which up to that time, is given in a particular way. This, however, will not always be the effect of it. Thus, where there was a gift to A for life, remainder to her children, "until" they should attain 25, then for such children so attaining 25, with a gift over; it was held that A's children took vested interests at birth, and that the gift over was void for remoteness (*Hardcastle v. Hardcastle* 1 H. & M. 405; see *Bland v. Williams* 3 L.J. Ch. 218). Under a devise to A, not to be of age to receive it "until" he attain a particular age, A takes a vested interest subject to being divested on his dying under that age (*Snow v. Poulden* 1 Keen, 186).

(9) "Until he shall assign or charge or affect to assign or charge": see *Re Marshall* [1920] 1 Ch. 284.

(10) "Until she shall take the veil": see *Re Hewitt* [1926] 1 Ch. 740.

(11) "Until she shall marry": see *Re Mason* [1910] 1 Ch. 695, cited UNMARRIED.

(12) "Until the happening of any event whereupon the same if given absolutely . . . would no longer be received": see *Re Levinstein* [1921] 2 Ch. 251.

(13) "Until the said intended marriage": see *Re Wombwell's Settlement* [1922] 2 Ch. 298.

(14) "Until some event shall happen whereby the said income if belonging to him would become vested or charged in some other person or persons or corporation": see *Re Chamberlaine's Settlement* [1922] 2 Ch. 850.

(15) As to the value of "until" in a limitation working a forfeiture on alienation, see *per Chitty J.*, *Dean v. Dean* [1891] 3 Ch. 155, but see on this case 36 S.J. 181; see hereon *Brandon v. Robinson* 18 Ves. 429. In that connection "until," like "shall become," has generally a past as well as a future application, *e.g.* gift to A for life, then to B, during A's life, commits the act; thereby forfeiture is worked before B's estate begins (*Sharp v. Cosserat* 20 Bea. 470). See QUOUSQUE; TO.

(16) "Until after the completion of the works," in condition 32 of the form of contract issued by the Royal Institute of British Architects: see *Smith v. Martin* [1925] 1 K.B. 745.

(17) "Until on board steamer." For the meaning of these words in an insurance policy, see *Ewing & Co. v. Sickelmore* 34 T.L.R. 501.

(18) Repair to road "until taken over by the local authority": see *Skinner v. Hunt* [1904] 2 K.B. 452, cited REPAIR.

(19) "Until warning has been given by persons in charge to persons employed whose safety is likely to be endangered," in reg. 163 under Coal Mines Act 1911 (c. 50): see *Harrison v. Wythemoor Colliery Co. Ltd.* [1922] 2 K.B. 674.

(20) Provisional "until a fully legalised agreement" is signed, "until" is not the right word to import a condition or a stipulation as to the event referred to (*Branca v. Cobarro* [1947] K.B. 854). See also PROVISIONAL.

UNTIL FURTHER ORDER. (1) Where an interim injunction is granted over a certain day "or until further order," the injunction is not continued after the day named "until further order," but may be stayed by order, before the day named (*Bolton v. London School Board* 7 Ch. D. 766). Injunction "until defence or further order," *semble*, remains in force until discharged by order, though defence be delivered (*Ooddeen v. Oakley* 2 D.G.F. & J. 158).

(2) An order, in an administration action, to pay an annuity "until further order" is, notwithstanding the latter phrase, *res judicata*, for purposes of appeal (*Peareth v. Marriott* 22 Ch. D. 182).

(3) An authority to make periodical payments "until further order" is an absolute assignment.

UNTO. See **TO**; **TOWARDS**.

“Unto and among”: see **AMONG**.

To deliver a notice “unto” a person: see **SERVED**.

UNTRUE. (1) A misleading statement in a prospectus was “untrue” within s.3(1)(a), Directors Liability Act 1890 (c. 64), even though it was true in the sense in which it was used by those who issued the prospectus (*Greenwood v. Leather Shod Wheel Co.* [1900] 1 Ch. 421); and a statement which was untrue in fact was none the less “untrue” within this section because made on the best advice obtainable and in perfect good faith and with the fullest intention and desire to omit nothing that ought to be disclosed (*Shepherd v. Broome* [1904] A.C. 342). See further *McConnell v. Wright* [1903] 1 Ch. 546, cited **ACQUIRE**. Cp. *Twycross v. Grant* 2 C.P.D. 469, cited **KNOWINGLY**, the principles of the cases mentioned in the notes thereon being, *semble*, applicable to “untrue”, see Companies Act 1985 (c. 6), s.71(a); *Adams v. Thrift* [1915] 2 Ch. 21.

(2) So, to “untruly declare” one’s income, in a claim of exemption from tax (s.30, Income Tax Act 1918 (c. 40)), was to make a positive statement as to the income which, in some material respect, was untrue in fact, although it might not be fraudulent but only inexcusably careless (*per Stormonth Darling L.O.*, *Lord Advocate v. M’Laren* 42 Sc. L.R. 762, cited **CHARGEABLE**).

See **CORRECT**; **TRUE**.

UNTRUSTWORTHY. How far, if at all, this word is defamatory, see *Mathieson v. Scottish Trade Protection Society* 5 Sc. L.T. 291.

UNUSUAL. (1) A thing which is unusual is not, necessarily, extraordinary (see *Hill v. Thomas* [1893] 2 Q.B. 333, cited **EXTRAORDINARY TRAFFIC**).

(2) “Unusual danger.” The rule in *Indermaur v. Dames* L.R. 1 C.P. 274 is that an invitor is under a duty to prevent damage to an invitee from an “unusual danger.” “Unusual” here means such danger as is not usually found in carrying out the task or fulfilling the function which the invitee has in hand, though what is unusual will vary with the reasons for which the invitee enters the premises. A danger, either in relation to the person or the place, does not cease to be unusual because it has become familiar (*London Graving Dock v. Horton* [1951] A.C. 737). See also *Jennings v. Cole* [1949] 2 All E.R. 191; *Payne v. British India Steam Navigation Co. Ltd.* [1947] S.A.S.R. 236; *London Graving Dock Co. v. Horton* [1951] A.C. 737.

(3) “Unusual manner”: see *Edinburgh Water Trustees v. Clippens Oil Co.* 35 Sc. L.R. 425, cited **WILFUL DAMAGE**.

See **USUAL**.

UNWHOLESOME. A food imported for a particular purpose is not necessarily “unwholesome” within the meaning of reg. 6(1)(c) of the Imported Food Regulations 1968 (No. 97) just because it could be considered unwholesome if used for some other purpose. It has to be judged in the context of the specific use intended (*R. v. Archer, ex p. Barrow Lane & Ballard*, (1983) 82 L.G.R. 361).

UNWILLING. (1) Referring to the earlier cases on the ordinary clause in “conditions of sale” enabling a vendor to rescind the contract if he should be “unable or unwilling” to answer purchaser’s requirements, Turner L.J., said in *Duddell v. Simpson* (2 Ch. 102), “These cases have settled, and I think very wisely settled, that the word ‘unwilling,’ in a condition of sale of this description, is not to be con-

sidered as giving an arbitrary power to the vendor to annul the contract.” But though that passage was cited to *Bacon V.-C.*, in *Dames to Wood* (27 Ch. D. 177), he said, “The word ‘unwilling’ is as potent as the word ‘unable’. Nobody is entitled to ask why he is unwilling; if he refuses to comply with the requisition that is enough” (*Dames to Wood* affirmed 29 Ch. D. 626; see further, judgments of Esher M.R., and Lindley L.J., *Terry to White* 32 Ch. D. 14). The result seems to be that, though “unwilling” means “reasonably willing,” and does not justify a vendor in capriciously translating it into “I will not,” yet in rescinding the contract he is not bound to give his reason for his unwillingness to complete it, and the onus of proving his caprice or *mala fides* is on the purchaser (*Re Glenton and Saunders* 53 L.T. 434; *Re Starr-Bowkett Society* 42 Ch. D. 375; *Woolcott v. Pegg* 15 App. Ca. 42). See further **WHATSOEVER**. Cp. **INSIST**.

(2) For an example of a vendor being “unreasonably unwilling” and acting arbitrarily, and therefore not entitled to rescind the contract, see *Quinion v. Horne* [1906] 1 Ch. 596; see also *Re Jackson and Haden* [1905] 1 Ch. 603, and *Re Simpson and Moy* 53 S.J. 376, both cited **TITLE**; *Merrett v. Schuster* [1902] 2 Ch. 240; *Proctor v. Pugh* 127 L.T. 126. See **LITIGATION**.

Cp. **WILLINGLY**.

UNWORKABLE. See **WORKABLE**; **WORTH THE EXPENSE**.

UNWORTHY. To say, even of a peer, that “he is an unworthy man, and acts against law and reason,” is not actionable; for “in respect of God Almighty we are all unworthy, and the subsequent clause explains what unworthiness the defendant intended, for he infers him to be unworthy because he acts against law and reason,” which latter words are not actionable (*per Scroggs J.*, *Townsend v. Hughes* 2 Mod. 159).

UP TO. (1) A power for a lessee to determine a lease on notice provided that the lessee’s covenants are performed “up to the time of such determination,” is validly exercised if the covenants are performed at the date of expiry of the notice, although they are not performed at the date of the notice (*Simmons v. Associated Furnishers Ltd.* [1931] 1 Ch. 379).

(2) “All assessed taxes . . . up to April 5 next before the date of the receiving order” (Bankruptcy Act 1914 (c. 59), s.33(1)(a)): see *Re Pratt, Ex p. Inland Revenue Commissioners v. Phillips* [1951] Ch. 225.

UPHOLD. A covenant to “repair, *uphold*, *sustain*, and *maintain*” premises, *semble*, is not enlarged by these italicised words, but is simply one to “repair” (*Lister v. Lane* [1893] 2 Q.B. 212); but see *London v. Great Western Railway* [1910] 2 Ch. 314, cited **MAINTAIN**. See further *Kennedy v. Glasgow & South Western Railway* 43 Sc. L.R. 31, cited **MAINTAIN**.

UPKEEP. (1) A gift for the “upkeep” of a Baptist Chapel was a valid bequest (*Re Strickland’s Will Trusts* [1936] 3 All E.R. 1027).

(2) Real estate was devised to trustees “without being answerable for upkeep”; this was held to be limited to physical upkeep (*Re Gerlach* 2 L.M.D. 2237).

UPON. (1) “‘Upon’; this word, in most cases, is used elliptically for ‘upon condition of’; as, ‘upon payment of costs,’ ‘upon conviction of an offender’ ” (Dwar. (2nd ed.) 692); or an appeal “upon” giving a prescribed notice (*R. v. Lancashire Justices* 27 L.J.M.C. 161).

(2) It also means “by reason of”; as where one person becomes beneficially entitled to property “upon the death” of another (*Lord Advocate v. Fleming* [1897] A.C. 145; *Lord Advocate v. Seafield's Trustees* 1955 S.L.T. (Notes) 12).

(3) “The words ‘on,’ or ‘upon,’ it has been decided, may either mean ‘before’ the act done to which it relates, or ‘simultaneously with’ the act done, or ‘after’ the act done, according as reason and good sense require, with reference to the context and the subject-matter of the enactment” (*per Denman C.J.*, *R. v. Arkwright* 12 Q.B. 970, citing *R. v. Humphery* 2 P. & D. 691, which last case, for same definition, was cited by Bovill C.J., *Paynter v. James* L.R. 2 C.P. 354). See also *R. v. Stockton* 7 Q.B. 520, cited IN AND FOR; *per Coleridge J.*, *Scott v. Parker* 1 Q.B. 813.

(4) In *R. v. Humphery* 2 P. & D. 691, “upon admission” to public corporate office a person to make a declaration (Sacramental Test Act 1828 (c. 17), s.2) meant that the person could not be called on to declare until “after” admission. So, under s.10, Mayor’s Court of London Procedure Act 1857 (c. clvii), an appeal motion might be made “if upon the trial” the judge gave leave; this meant, at, or within a reasonable time “after,” the trial; and (in construing that Act) the majority of the court held that two days (whilst Brett J., though that four days) was such a reasonable time (*Folkard v. Metropolitan Railway* L.R. 8 C.P. 470); cp. AT. So, the power given (Infant Settlements Act 1854 (c. 43), s.1) to make a settlement “upon” the marriage of an infant, meant “in the event of,” or “on the occasion of,” his or her marriage; and a post-nuptial settlement was thereby authorised (*Re Sampson and Wall* 25 Ch. D. 482; *Re Phillips* 34 Ch. D. 467; *Buckmaster v. Buckmaster* 35 Ch. D. 21; but see *Re Borrowes* Ir. Rep. 2 Eq. 468, inf.); but *semble*, not if it was long after the marriage (*Re Leigh* 40 Ch. D. 290; see CONTEMPLATION).

(5) But a power to stop up paths “on notice being given” in the prescribed manner (Church Building Act 1819 (c. 134), s.39), meant that the notice must be given “before” making the order (*R. v. Arkwright* sup.).

(6) “Upon an information being laid” (Magistrates’ Courts Act 1952 (c. 55), s.1(1)). “Upon” does not mean “immediately,” and a delay of six months, or even one year, before the issue of a summons did not contravene this section (*R. v. Fairfield Justices, ex p. Brewster* [1976] Q.B. 600).

(7) “Payment on delivery” means that both acts are to be done simultaneously (*Paynter v. James* L.R. 2 C.P. 348).

(8) The sanction to continue directors’ powers, in a voluntary liquidation of a company, “upon” the appointment of liquidators (s.133(5), Companies Act 1862 (c. 89)), need not be given once and for all immediately on such appointment, but may be given during the winding-up (*Re Fairbairn Co.* 63 L.J. Ch. 8). See Companies Act 1985 (c. 6), s.580.

(9) A power enabling the court to make an order vesting the legal estate in lands “upon” making an order appointing a new trustee, may be exercised prospectively (*Plomley v. Richardson* [1894] A.C. 632; see further *Re Shortridge* 64 L.J. Ch. 191).

(10) A trust to invest “upon” ground rents authorises their purchase: “upon,” in such a connection, is not to be read as (or rather, is not to be confined to) “upon the security of” (*Re Mordan* [1905] 1 Ch. 515, cited INVEST). See Trustee Act 1925 (c. 19), s.1.

(11) “Upon the death or bankruptcy of any officer” in s.35, Friendly Societies Act 1896 (c. 25); see *Re Eilbeck* [1910] 1 K.B. 136, cited PREFERENCE.

(12) “Upon any representation or assurance” (s.6, Statute of Frauds Amendment Act 1828 (c. 14)); see *Haslock v. Fergusson* 7 A. & E. 94; *Pearson v. Selgman* 48 L.T. 842.

(13) Entitlement to commission “upon your introducing a purchaser” does not signify the time when an agent becomes entitled to commission, but can only signify the services to be rendered by the agent (*Reed (Dennis) v. Goody* [1950] 2 K.B. 277).

(14) A conveyance securing an option to purchase before it is exercised is not a conveyance of property “upon the sale thereof” within the meaning of s.54 of the Stamp Act 1891 (c. 34) (*Cory (Wm.) & Son v. I.R.C.* [1965] A.C. 1088).

Property which passes “on” death: see PASSING.

Vehicle passing “upon” a HIGHWAY: see PASSING.

Projection “over or upon” a payment: see PROJECTION.

See BUILT UPON; ON OR BEFORE; ON OR UPON; THEREUPON.

UPON CONDITION. See CONDITION.

UPON CONVICTION. See CONVICTION.

UPON THE MERITS. See MERITS.

UPON TRIAL. See SALE ON TRIAL.

UPON TRUST. (1) No beneficial interest is taken if property be given or granted “upon trust,” though no trust be declared (Lewin (15th ed.) 136, and cases there cited). But “although the introduction of the words ‘upon trust’ may be strong evidence of the intention not to confer on the devisee a beneficial interest (*Hill v. London* 1 Atk. 620; *Woollett v. Harris* 5 Mad. 452), yet that construction may be negatived by the context, or the general scope of the instrument (*Dawson v. Clarke* 18 Ves. 247, 257; *Coningham v. Mellish* Pr. Ch. 31; *Cook v. Hutchinson* 1 Keen, 42; *Hughes v. Evans* 13 Sim. 496); and in like manner the devisee may be designated as ‘trustee,’ but the expression may be explained away, as for instance, if the term be used with reference to one only of two funds, the devisee may still establish his title to the beneficial interest in the other (*Batteley v. Windle* 2 Bro. C.C. 31; *Pratt v. Sladden* 14 Ves. 193; see also *Gibbs v. Rumsey* 2 V. & B. 294). On the other hand, there may be a total absence of the word ‘trust’ or ‘trustee’ throughout the whole will, and yet the court may collect an intention that the devisee or legatee should be a trustee (*Saltmarsh v. Barrett* 30 L.J. Ch. 853)” (Lewin (15th ed.), 136). See further *Croome v. Croome* 59 L.T. 582, affirmed 61 L.T. 814, distinguished in *Re West* [1900] 1 Ch. 84; *Re Foord* [1922] 2 Ch. 519.

(2) “Upon such trusts as will best correspond with the uses, trusts and powers” (of settled realty). For the meaning of these words in a will in reference to heirlooms, see *Re Beresford-Hope* [1917] 1 Ch. 287.

See IN TRUST; TRUST; TRUSTEE.

UPON VIEW. See VIEW.

UPSET PRICE. A synonym for reserved price: see WITHOUT RESERVE.

URBAN. (1) “Urban authority”; see hereon *Soothill v. Wakefield* [1905] 2 Ch. 516.

(2) “Urban district,” “urban sanitary district”: see DISTRICT. See further *Kirkdale Burial Board v. Liverpool* [1904] 1 Ch. 829, cited DISTRICT.

URGENT. “Urgent need” (R.S.C., Ord. 64, r. 4(2)). A high standard is required to satisfy the Court of the urgency of the need to order a trial during the long vaca-

tion (*Re Showerings, Vine Products and Whiteways Application* (Practice Note) [1968] 1 W.L.R. 1381).

“Sudden and urgent necessity”: see **SUDDEN**.

URINAL. The power to local authorities—*e.g.* s.88, Metropolis Management Act 1855 (c. 120); s.39, Public Health Act 1875 (c. 55) (see Public Health Act 1936 (c. 49), s.87)—to erect “urinals, water-closets,” etc., does not authorise such erections in such a way as to create a nuisance (*Vernon v. St. James, Westminster* 16 Ch. D. 449; see also *Parish v. London* 67 J.P. 55, cited **THINK FIT**; see further **DAMAGE**). See *Tunbridge Wells v. Baird* [1896] A.C. 434, cited **IN**, with which cp. *Graham v. Newcastle-upon-Tyne* 67 L.T. 260, 790, cited **OPEN**.

USAGE. (1) “Usage” is that which is known as a recurring modern practice in a locality or business; and does not require a prescription, as a custom does (*Finch’s Case* 6 Rep. 65). Cp. *A.-G. v. Yarmouth* 21 Bea. 625, cited **PRACTICE**.

(2) In Marine Insurance Act 1906 (c. 41), means trade usage: see *British & Foreign Marine Insurance Co. v. Gaunt* [1921] 2 A.C. 41, cited **RISK**.

USAGE OF TRADE. “The words ‘usage of trade’ are to be understood as referring to a particular usage to be established by evidence; and perfectly distinct from that general custom of merchants, which is the universal established law of the land, to be collected from decisions, legal principles and analogies (not from evidence *in pais*), and the knowledge of which resides in the breasts of the judges” (1 Sm. L.C. 581, 582, and cases there cited). Cp. **CUSTOM**.

See **TRADE**.

USAGES. See **LIBERTY**.

USE. (1) On “use” as employed in 1 Ric. 3, and on uses prior to the Statute of Uses (27 Hen. 8. c. 10), see Sanders on Uses, ch. 1; on uses since that statute, see *ibid.* ch. 2. See further *Chudleigh’s Case* 1 Rep. 121 *et seq.*; 1 Cru. Dig. Title 11; Wms. R.P. Pt. 1, ch. 8; Goodeve (6th ed.), ch. 10; Challis 3rd ed.), 386; **DECLARATION**; **TRUST**. As to the rise of uses, and the contrast and resemblance between uses and trust, see *Burgess v. Wheate* 1 Eden, 177, and especially judgment of Mansfield C.J. *Cestui que use*: see **CESTUI**.

(2) A conveyance to A “to hold unto and to the use of A” in fee simple has been repeatedly held to operate at common law, and not under the Statute of Uses—*Jenkins v. Young Cro.* Car. 230; *Meredith v. Joans* *ibid.* 244; *Peacock v. Eastland* L.R. 10 Eq. 17. This proceeds on the language of the Statute of Uses, which only applies “where any person or persons . . . shall happen to be seized of and in any . . . hereditaments, to the use, confidence or trust, of any other person or persons.” s.1. Statute of Uses 1535 (c. 10) (repeated Law of Property (Amendment) Act 1924 (c. 5), (*Savill v. Bethell* [1902] 2 Ch. 523). See Law of Property Act 1925 (c. 20), s.60. See **SUBSISTING**.

(3) The grant of a “use” or “necessary use,” or even “exclusive use,” of parts of premises will generally connote not more than a license (*per* Romer L.J., *Warr v. London County Council* [1904] 1 K.B. 713, cited **INTEREST IN LAND**). Cp. **OCCUPATION**; *Re Johnston* 41 Sc. L.R. 582, cited **OCCUPATION**; *Marshall v. Blew* 2 Atk. 217, *inf.*

(4) “Open, keep, or use” a house, office, room, or other place, for betting (see BET), ss.1 and 3, Betting Act 1853 (c. 119): see *R. v. Cook* 13 Q.B.D. 377; *Davis v. Stephenson* 24 Q.B.D. 529; *Whitehurst v. Fincher* 62 L.T. 433; *Macwilliam v. Dawson* 56 J.P. 182; *Hornsby v. Raggett* [1892] 1 Q.B. 20; *Bond v. Plumb* [1894] 1 Q.B. 169; *R. v. Worton* [1895] 1 Q.B. 227. As to the ambiguous meaning of “use” in this connection, see *per Halsbury C.*, *Powell v. Kempton Park Co.* [1899] A.C. 162, cited PLACE. See hereon KEEP; RESORT. Cp. PUBLIC SINGING.

(5) “It is a question of fact in each case whether there is a user of a place analogous to that of an occupier occupying a place at which he is prepared to bet with people who come there and bet with him, as in the case of a betting office” (*per* Channell J., *Brown v. Patch* [1899] 1 Q.B. 892, cited PLACE). If the betting-man, when pursuing his vocation, is in place, *e.g.* licensed premises, in the occupation of another who knows what is going on and does nothing to prevent it, then the place is being “used” by the betting-man for betting (*Brown v. Patch*; *Belton v. Busby* [1899] 2 Q.B. 380, cited USING; *Tromans v. Hodgkinson* [1903] 1 K.B. 30). But, “assuming there is a place which is not at the time, either in law or fact, in possession of the person charged, but is a common place to which persons have access for other purposes, then, in order to justify a conviction (against the betting-man), evidence is required from which the jury may draw the conclusion that the person who owns the place authorised, licensed, or permitted that to be done which he need not have permitted having regard to his own rights over the place” (*per* Alverstone C.J., *R. v. Deaville* [1903] 1 K.B. 475; *Clark v. Westaway* [1927] 2 K.B. 597). See also USED.

(6) It was to “open, keep, or use” a house, office, room, or other place, “for the purpose” of receiving “money or valuable thing” as a consideration for an undertaking to pay on an “event or contingency of or relating to” a horse race, game, etc., within the second part of s.1, Betting Act 1853 (c. 119), when there was a “localization” (see *per* Lord James, *Powell v. Kempton Park Co.* [1899] A.C. 194, cited PLACE) in England of any essential part of the transaction, *e.g.* where Stoddart established at No. 10 Red Lion Court, London, a newspaper called *Sporting Luck*, which was sold there chiefly to newspaper agents and by them sold to their customers, and each copy of the paper provided a coupon sheet (which was also procurable separately at the newspaper office), such coupons to be filled up with names of horses selected as future winners and then to be sent, with the money payable thereon, to Stoddart’s son at Middleburgh in Holland, who remitted to the successful competitors the prizes obtained by their correctly naming such winners; held, that the newspaper office was a mere name with which Stoddart clothed the office kept by him for the purpose of carrying out these transactions, and that such office at No. 10 Red Lion Court was “used” by him “for the purpose” of the matters prohibited by the second part of the section above mentioned (*Lennox v. Stoddart* [1902] 2 K.B. 21, approving *Stoddart v. Hawke* [1902] 1 K.B. 353; see further *Mackenzie v. Hawke* [1902] 2 K.B. 216, cited KNOWINGLY; BET; *R. v. Mortimer* 80 L.J.K.B. 76). See hereon *Vogt v. Mortimer* 22 T.L.R. 763, *Jackson v. Roth* [1919] 1 K.B. 102; *Taylor v. Monk* [1914] 2 K.B. 817.

(7) (Betting Act 1853 (c. 119), s.1.) Where a bookmaker from his own premises used the public telephone to make bets with the members of a club, he was held not to have “used” the club premises so as to bring the owner, occupier, or keeper thereof within the prohibition of the section (*Milne v. City of London Police Commissioner* [1940] A.C. 1). See also *R. v. Porter* [1949] 2 K.B. 128.

(8) The Gaming House Act 1854 (c. 38), “was intended to suppress common gaming houses” (*per* Russell C.J., *R. v. Davies* [1897] 2 Q.B. 199); therefore, gam-

bling on an isolated occasion in a private house was not to “open, keep, or use” the house for unlawful gaming within s.4 (*ibid.*); see KEEP. See further *Fielding v. Turner* [1903] 1 K.B. 867, cited UNLAWFUL GAMING; *Marlin v. Benjamin* [1907] 1 K.B. 64, cited KEEP.

(9) Premises can be “used . . . for the purpose of providing . . . music and dancing and substantial refreshment” (Licensing Act 1964 (c. 26), s.77(b)) even if it is possible to go there for the purpose of obtaining intoxicating drink only (*Richards v. Bloxham (Binks)* (1968) 66 L.G.R. 739).

(10) An agreement which, in a passive form, stipulates that the contractor is “not to use” premises for other than a specified trade, has not an active operation compelling him to carry on that trade (*Doe d. Bute v. Guest* 15 M. & W. 160). See *Brigg v. Thornton* [1904] 1 Ch. 386, cited LET; RESTRAINT. Covenant not to “erect or use” competing works: see ERECT.

(11) As to a covenant in a lease not to use or permit the said dwelling-house . . . to be used for the purpose of any trade or business whatsoever, see *Thorn v. Madden* 41 T.L.R. 628.

(12) Publishers, whose business was the selling of advertising space in diaries which were distributed free, were held to have made the diaries “for use” in connection with a business carried on by them within s.6(3) of the Finance Act 1962 (c. 44) (*Warwickshire Publishing Co. Ltd. v. Commissioners of Customs and Excise* [1970] 1 W.L.R. 457).

(13) “For use as food for cattle,” as regards Fertilizers and Feeding Stuffs Act 1906 (c. 27), s.1(2) see *Pulling v. Lidbetter Ltd.* [1924] 2 K.B. 114. See also FOOD FOR CATTLE.

(14) It is a breach of covenant for a tenant who has covenanted not to underlet or to permit any other person to “use or occupy” any part of demised premises without the consent, etc., . . . to sell or let without consent the grass keep of his pasture lands for a definite period, but, *semble*, agistment would not be: see *Richards v. Davies* [1921] 1 Ch. 90. See also USE AND OCCUPATION.

(15) A structure which, without a licence, could be “erected by a builder for use” during operations (proviso to s.13, Metropolis Management Act 1882 (c. 14)) had to be one for the builder’s own use—one for the temporary carrying on the business of his employer, was not within the proviso (*London County Council v. Candler* 60 L.J.M.C. 114).

(16) “Use” (Town and Country Planning Act 1947 (c. 51), s.12(2)) meant a lawful use, at least, in the sense that a use constituting a criminal or quasi-criminal offence was not within the meaning of the term (*Glamorgan County Council v. Carter* [1963] 1 W.L.R. 1).

(17) “Use of land” (Town and Country Planning Act 1971 (c. 78), s.51(1)(a)) comprises activities which are done in, alongside or on the land but do not interfere with the actual physical characteristics of the land. The storing and sorting of scrap was held to be a “use of land” within the meaning of s.51 on the grounds that it caused no physical alteration to the land. It was not an “operation” within the meaning of the exception to the definition of “use” in s.290(1), as to be an “operation” it would be necessary for some physical alteration to have resulted (*Parkes v. Secretary of State for the Environment* [1978] 1 W.L.R. 1308).

(18) “Required for a use other than agriculture” (Agricultural Holdings Act 1948 (c. 63), s.24(2)(b)). Land was “required for use” as a sports ground because it had once been so used and the landlord intended to sell it as a sports ground (*Jones v. Gates* [1954] 1 W.L.R. 222). The words mean a use by anyone, provided the person is sufficiently definite, and the requirement sufficiently certain. Thus agricultural

land compulsorily acquired for a reservoir is “required for a use other than agriculture” within the meaning of this section (*Rugby Joint Water Board v. Footitt; Same v. Shaw-Fox* [1972] 2 W.L.R. 757).

(19) An Inclosure Act which authorised the setting apart quarries “for the repair of roads, and for the use of the inhabitants” of A, was construed as giving the inhabitants a right to stone for repairs of roads, but not for private purposes (*Rylatt v. Marfleet* 14 L.J. Ex. 305).

(20) “Use or exercise” an art, trade, etc., within a city custom, means to carry it on “as a master or principal” (*per Tenterden C.J., Clark v. Denton* 1 B. & Ad. 101).

(21) An ordinary traveller along a railway in a carriage belonging to the company, did not “use” the railway within s.95, Railways Clauses Consolidation Act 1845 (c. 20), or within enactments of a similar kind (*Brown v. Great Western Railway* 9 Q.B.D. 744, and cases therein cited).

(22) A steam roller crossing one county in order to do work in another was, whilst passing over highways on its journey, being “used” within s.32, Highways and Locomotives (Amendment) Act 1878 (c. 77) (*London County Council v. Wood* [1897] 2 Q.B. 482).

(23) “Uses” (Motor Vehicles (Construction and Use) Regulations 1951 (No. 2101), reg. 101; see now 1969 (No. 321)). The person in charge of a vehicle may be, and the driver certainly is, “using” the vehicle (*Gifford v. Whittaker* [1942] 1 K.B. 501). If the driver is a servant then his master is also “using” the vehicle whether the master is a private individual or a limited company, provided that the servant is driving on his master’s business (*James & Son v. Smee* [1955] 1 Q.B. 78).

(24) “Used for . . . police purposes” (Road Traffic Act 1960 (c. 16), s.25, Road Traffic Regulation Act 1967 (c. 76), s.79). A police officer travelling to court in order to give evidence transferred to a police car when his own broke down and exceeded the speed limit. The car was being “used for police purposes” within the meaning of this section (*Aitken v. Yarwood* [1965] 1 Q.B. 327).

(25) “Uses a vehicle” (Road Traffic Act 1960 (c. 16), s.134(3)). A limited company is capable in law of “using” a motor vehicle (*Brown v. Grange Tours* [1968] 112 S.J. 1010).

(26) “No vehicle . . . shall be used for the carriage of goods for hire or reward” (Road and Rail Traffic Act 1933 (c. 53), s.2(4); see Transport Act 1968 (c. 73), s.60) meant “used by anybody” and not “used by the holder of the licence” (*Lloyd v. E. Lee* [1951] 2 K.B. 121).

(27) “Use the . . . vehicles” (Road and Rail Traffic Act 1933 (c. 53), s.2(3); see Transport Act 1968 (c. 73), s.60). A haulage contractor who hired out vehicles and drivers to another company, to operate solely under the control of that company, was the “user” of those vehicles for the purposes of this section (*Sykes v. Millington* [1953] 1 Q.B. 770). An agent who found work for drivers and then contracted with the employer that, once accepted, the driver should be the employer’s servant, was not (in the absence of any contract between him and the driver) the “user” of the vehicle (*Alderton v. Richard Burgon Associates (Manpower)* [1974] R.T.R. 422).

(28) “Uses . . . a motor vehicle” (Road Traffic Act 1960 (c. 16), s.64(2), now Road Traffic Act 1972 (c. 20), s.40(5)). A person may not be convicted under these sections unless he is the driver or the driver’s employer (*Windle v. Dunning & Son* [1968] 1 W.L.R. 552; *Crawford v. Haughton* [1972] 1 W.L.R. 572). Since separate provision is made in these sections for an offence of causing or permitting, the verb “use” has a restricted meaning not extending to cover an absent partner merely by virtue of the partnership (*Garrett v. Hooper* [1973] R.T.R. 1).

(29) "Used on the road" (Road Traffic Acts 1930 (c. 43), s.35(1); 1960 (c. 16), s.201(1)(a); 1972 (c. 20), ss.40, 44, 143(1)) is in contradistinction to the word "drive"; it is equivalent to "have the use of a motor-vehicle on the road"; a car placed on the road, jacked up and rendered incapable of being driven is "used on the road" within the section (*Elliott v. Grey* [1960] 1 Q.B. 367; [1959] 3 W.L.R. 956; [1959] 3 A11 E.R. 733). A person does not "use . . . a motor-vehicle on a road" unless there is at the relevant time some element of control, management or operation of the vehicle. The opening of a door of the motor-vehicle by a passenger is not such a "use" (*Brown v. Roberts* [1965] 1 Q.B. 1). The duty under this section to insure against the third-party liability of any person permitted to "use" a motor vehicle applies only to a use of the vehicle by a person in whose relationship to the vehicle there is a sufficient element of controlling, managing or operating the vehicle, and does not extend to a person who is merely a passenger and who has, as a passenger, control of a door as he enters or alights (*Brown v. Roberts* [1965] 1 Q.B. 1). The owner of a car travelling in it for his own purpose is "using" the car within the meaning of this section notwithstanding that it is being driven by someone else (*Cobb v. Williams* [1973] R.T.R. 113). The decision in *Elliott v. Grey* [1960] 1 Q.B. 367 (*supra*) seems now to be generally accepted. The word "uses" in these sections, and in the sections of the earlier Acts which they replace, means "has the use of." It was followed in *Eden v. Mitchell* [1975] R.T.R. 425 (a parked car was being "used"), *Gosling v. Howard* [1975] R.T.R. 429 (a car kept on a verge was being "used"), and *Williams v. Jones* [1975] R.T.R. 433 (a vehicle abandoned uninsured was being "used"). It had, however, to be distinguished in *Hewer v. Cutler* [1974] R.T.R. 155 where it was held that a wholly and effectively immobilised car, although on a road, was not being "used." "Use" of a vehicle with defective brakes contrary to s.40(5)(b) is an absolute offence covering the owner of a vehicle even where the owner has hired the vehicle, with a driver, for a long period to a third party (*Mickleborough v. B.R.S. (Contracts)* [1977] R.T.R. 389). An employer "uses" a vehicle when it is driven by an employee, even though he is a silent partner in the taxi firm concerned (*Passmoor v. Gibbons* [1979] R.T.R. 53). But not if the driver is his partner (*Bennett v. Richardson* [1980] R.T.R. 358). A company can be guilty of "using" a vehicle within the meaning of s.40(5) (*William Swan & Co. v. Macnab*, 1978 S.L.T. 192). A van boy sitting in a stationary milk float on a slight incline, who, when instructed from a distance by the driver to move the van down, released the handbrake but did not touch the steering wheel, was not "using" the vehicle within the meaning of s.143 when it ran away down the hill (*Lockhart v. Smith*, 1979 S.L.T. (Sh. Ct.) 52). A prospective purchaser who went with two friends to inspect a car and who, while one friend sat in the driver's seat, helped the other push-start the car, was held to be "using" the car without insurance when he jumped into the passenger seat in order to evaluate its performance (*Leathley v. Tatton* [1980] R.T.R. 21). A passenger in a vehicle, who had no power of control over the driver did not "use" the vehicle for the purposes of s.143 notwithstanding that he knew that the vehicle had been taken without the owner's consent, and was being driven without insurance cover (*B (A Minor) v. Knight* [1981] R.T.R. 19).

(30) "Use of the vehicle on a road" (Road Traffic Act 1960 (c. 16), s.203(3)(a), now Road Traffic Act 1972 (c. 20), s.145). A vehicle driven with deliberate felonious intent is "used" on the road within the meaning of this section (*Hardy v. Motor Insurers' Bureau* [1964] 2 Q.B. 845). A vehicle which, at the moment it injured a person standing on private land, was itself largely on a public road, was being used on a road within the meaning of this section (*Randall v. Motor Insurers'*

Bureau [1968] 1 W.L.R. 1900). “Use” includes criminal use (*Gardner v. Moore* [1984] 2 W.L.R. 714).

(31) “Uses” (Road Traffic Act 1930 (c. 43), s.112(1)(a), now Road Traffic Act 1972 (c. 20), s.169(1)). Sending a licence to the local authority for renewal did not constitute “user” of the licence with intent to deceive within the meaning of this section (*R. v. McCardle* [1958] Crim. L.R. 50). The production of a false driving licence to the police, the request for which had nothing to do with the driving of a vehicle on the road, was held not to be using it with intent to deceive within the meaning of this section (*R. v. Howe* [1982] R.T.R. 45).

(32) “Uses” (Vehicles (Excise) Act 1971 (c. 10), s.8(1)). A vehicle owner “uses” the vehicle within the meaning of this section if his employee drives it on the owner’s business, even without his knowledge or authority (*Richardson v. Baker* [1976] R.T.R. 56).

(33) “Use” (Weights and Measures Act 1963 (c. 31), s.11(2)) includes not only persons actually using a vehicle, but also those causing or permitting its use, apparently however remote. In this case a contractor was guilty because an independent subcontractor used a vehicle which contravened this section (*Charman (F.E.) v. Clow* [1974] 1 W.L.R. 1384).

(34) “To be used only for commercial purposes.” For the meaning of these words in a motor car insurance policy, see *Roberts v. Anglo-Saxon Insurance Association* 96 L.J.K.B. 590.

(35) “I strongly incline to think that everyone ‘uses’ a drain the sewage from whose house communicates with it” (*per* Cockburn C.J., *R. v. Bodkin* 3 E. & E. 276).

(36) Local authority not authorised “to make or use” a sewer, etc., to convey sewage or filthy water into a stream without first purifying it (s.17, Public Health Act 1875 (c. 55)—“ ‘making or using a sewer’ means that you must not ‘make’ a sewer which brings down the sewage into the river—you must not ‘use’ existing sewers for bringing into a stream sewage which, by other means, you bring into the old sewer” (*per* Cotton L.J., *Glossop v. Heston* 12 Ch. D. 125, applied by Williams L.J., *Foster v. Warblington* [1906] 1 K.B. 670; *Dell v. Chesham Urban District Council* [1921] 3 K.B. 427). “Use” did not involve a prohibition against the local authority permitting the inhabitants of their district to put sewage in the local authority’s drains or sewers (*Pride of Derby and Derbyshire Angling Association v. British Celanese* [1953] Ch. 149). See also SEWER.

(37) Employers “use” a machine within reg. 4(ii) of the Building (Safety Health and Welfare) Regulations 1948 (No. 1145), even though they hire the machine and driver (*Gallagher v. Wimpey & Co. Ltd.* 1951 S.L.T. 377). A fan heater which is being run for the purposes of examination and adjustment is not being “used” within the meaning of this regulation (*Baxter v. Central Electricity Generating Board* [1965] 1 W.L.R. 200).

(38) “Use” (Factories Act 1937 (c. 67), s.23(1), Factories Act 1961 (c. 34), s.26(1)) is not confined to use authorised by the factory owner (*Barry v. Cleveland Bridge & Engineering Co.* [1963] 1 A11 E.R. 192).

(39) “If a man walks with a gun with intent to kill game, he ‘uses’ the gun for that purpose without firing, within the statute which makes using a gun, with that intent, penal” (Maxwell (10th ed.), 280, citing Game Acts 1706 (c. 16), s.4, and 1831 (c. 32), s.23; *R. v. King* 1 Sess. Ca. 88). So, a net could have been “used in taking” salmon (Salmon Fishery Act 1861 (c. 109)), though no salmon was then actually caught (*Ruther v. Harris* 1 Ex. D. 97). A person “used” an engine for killing game on a Sunday (Game Act 1831 (c. 32), s.3) who placed it on the land prior to, but

with the intention for it to remain there during, a Sunday (*Allen v. Thompson* L.R. 5 Q.B. 336; see *per* Lawrence J., *Jones v. Davies* [1898] 1 Q.B. 405).

(40) "Use gun for unlawfully killing or taking game" (Poaching Prevention Act 1862 (c. 114), s.2). A gun is used within the meaning of the section if it is taken upon land for the purpose of shooting game and is ready for firing (*Gray v. Hawthorn* 1961 S.L.T. 11).

(41) A clause in an agreement between shipowners and stevedores stated that "the stevedores should not use improper or inadequate gear," this meant "use" in the business sense, which did not necessarily include use of gear not belonging to the owners of the business but incidentally made use of by one of their servants (*T. F. Maltby v. Pelton Steamship Co.* [1951] 2 All E.R. 954).

(42) Bequest of "the use" of household goods, furniture, plate, jewels, linen, etc., for life, is not confined to a personal use; the beneficiary "may use the goods in his or her own, or any other person's house, alone, or promiscuously with other goods, or may let them out to hire" (*per* Hardwicke C., *Marshall v. Blew* 2 Atk. 217); and so, of a bequest of oil paintings and other pictures "for the use and enjoyment" of A during her life; and the beneficiary is not bound to insure (*Re Williamson* 94 L.T. 813); see further OCCUPATION; but see *Re Johnston* 41 Sc. L.R. 582, cited OCCUPATION; *Warr v. London County Council* *sup.* Cp. *Macdonald's Trustees v. Bain's Trustees* 33 Sc. L.R. 649, cited APPROPRIATE.

(43) "Goods materials or provisions for the use of any workhouse" (Poor Relief Act 1815 (c. 137), s.6), meant for "use" in the workhouse, and did not comprise repairs to the fabric (*Barber v. Waite* 3 L.J.M.C. 101).

(44) "Use" of furniture, within meaning of s.12(2), Increase of Rent etc. Act 1920 (c. 17): see *Wilkes v. Goodwin* [1923] 2 K.B. 86; *Crane v. Cox* 92 L.J.K.B. 544, cited FURNITURE.

(45) "Use of the undertakers" (Rating and Valuation (Apportionment) Act 1928 (c. 44), s.5(1)): the word "use" was not confined to use by consumption, but could have included such use as a trader might make of his stock in trade, *i.e.* by selling it (*Shell-Mex and B.P. v. Clayton* [1956] 1 W.L.R. 1198). See also DOCK.

(46) "Use, exercise, and vend" an invention: see VEND; *Walton v. Lavater* 29 L.J.C.P. 275. "The first meaning assigned to 'use' in Johnson's Dictionary is 'to employ to any purpose'; it is, therefore, a word of wide signification. It seems to me that the terms 'use' and 'make use of' are intended to have a wider application than 'exercise' and 'put in practice'; and, without saying that no limit is to be placed on the two former expressions in the patent, I think, on the best consideration that I can give, that they are not confined to the use of a patented article for the purpose for which it is patented" (*per* Stirling J., *British Motor Syndicate v. Taylor* [1900] 1 Ch. 583); that learned judge, accordingly, held that to buy in England an infringing article and then transport it to Paris for sale, was "using," or "making use of," the invention in England, and was an infringement of the patent ([1900] 1 Ch. 577, affirmed [1901] 1 Ch. 122, which case dealt with the doubts of the Lord Herschell, *Badische Anilin und Soda Fabrik v. Basle Works* [1898] A.C. 208). Observe further, "If a person uses an invention to present his goods for sale and intending the thing exhibited to represent what he is going to sell, and if part of that thing is an article which is an infringement and is serving a useful purpose during that time by being exhibited as part of the machine, I think it is a user of the invention" (*per* Alverstone C.J., *Dunlop Co. v. British & Colonial Motor Co.* 18 Pat. Ca. 315). See NON-USER.

(47) "Was used" (Patents Act 1949 (c. 87), s.14(1)(d)). Where a manufacturer produced a drug withing recognising its patentable potential and then blended it

into capsules, where its identity was lost, then that drug “was used,” for the purposes of this section, when the capsules were sold (*R. v. Patents Appeal Tribunal, ex p. Beecham Group* [1973] 1 Q.B. 318).

(48) A person who has said that A.B. is the proprietor of a trade mark does not use it within s.4(1) of the Trade Marks Act 1938 (c. 22) (*M. Ravok (Weatherwear) v. National Trade Press* [1955] 1 Q.B. 554).

(49) To “take and use” a name, in a name and arms clause, means to “take and thereafter use,” *i.e.* there must be a continued user (*Re Drax* 75 L.J. Ch. 317, cited WRITING).

(50) “Use upon all occasions.” These words in a name and arms clause in a will meant that the beneficiary must use the surname on all occasions when he would ordinarily use a surname, and were sufficiently certain to be valid (*Re Neeld, Carpenter v. Inigo-Jones* [1962] Ch. 643).

(51) Bequest of business with “the use of the book debts or capital”; held, an absolute gift (*Terry v. Terry* 9 L.T. 469).

(52) An indorsement of a bill or note “to A or his order, for my use,” puts persons dealing with it on inquiry to see whether A is using the document for the indorser’s use, or his own (*Sigourney v. Lloyd* 8 B. & C. 622). See hereon RESTRICTIVE ENDORSEMENT; OWN USE; OWN USE AND BENEFIT.

(53) A vessel having had on board prohibited goods had been “made use of” in the importation and landing of such goods, within s.179 of the Customs Consolidation Act 1876 (c. 36), (*A.-G. v. Hunter* [1949] 2 K.B. 111).

(54) “Use of tobacco” (Food Hygiene Regulations 1955 (No. 1906), reg. 9(e)). A person “uses” tobacco within the meaning of reg. 9(e) if he holds a partly-smoked but extinct cigarette between his lips (*Pitt v. Locke* (1960) 58 L.G.R. 330, D.C.).

(55) The words “use or hire of a ship (Administration of Justice Act 1956 (c. 46), s.1(1)(h)) are wide enough to cover the hire of a tug under a towage contract (*The Conoco Britannia* [1972] 2 Q.B. 543). They are also wide enough to cover a salvage operation by a salvage tug (*The Eschersheim* [1975] 1 W.L.R. 83). A salvage agreement made between the master of a ship damaged in a collision and a tugmaster, representing the salvors, was an “agreement relating to the . . . use or hire of a ship” within the meaning of this section (*The Jade* [1976] 1 A11 E.R. 920). See SHIP.

(56) “Uses . . . the said forged document” (Forgery Act 1913 (c. 27), s.6(2)). Making a photostat copy of a forged document, and sending it with a view to deceiving the recipient, is “using” it within the meaning of this section (*R. v. Harris* [1966] 1 Q.B. 184).

(57) “For use in the course of or in connection with any burglary, theft or cheat” (Theft Act 1968 (c. 60), s.25(1)) means “for use in the future” and not “that has been used in the past” (*R. v. Ellames* [1974] 1 W.L.R. 1391).

(58) “Use” (Diseases of Animals Act 1950 (c. 36), s.61(4)(b)). An airline carrier, by virtue of being itself in charge of an animal carried by it, makes “use” of the airport quarantine station within the meaning of this section when, on landing, it places the animal there; notwithstanding that it was not the animal owner’s agent, and that it was complying with the requirement of the anti-rabies legislation (*City of London Corporation v. British Caledonian Airways* [1980] 2 A11 E.R. 292).

(59) The offence of “using” an apparatus for wireless telegraphy contrary to s.1(1) of the Wireless Telegraphy Act 1949 (c. 54) was committed where the set was available for use, regardless of whether it ever had been used (*D. (A Minor) v. Yates* [1984] Crim. L.R. 430).

“In motion or in use” (Factories Act 1937 (c. 67), s.16, and 1961 (c. 34), s.16); see **IN MOTION**.

Prior use of an invention: see **ANTICIPATION**; **PUBLIC USE**.

“Take or use” a stream: see **TAKE**.

“Take or use the title” of a profession: see **VETERINARY**.

Bequest for a person’s “use and disposal”: see **DISPOSAL**.

“In common use”: see **COMMON TO THE TRADE**. Cp. **IN USE**.

“Use for the purpose of”: see **PURPOSE**; **PURPOSES**.

Trustee converting property “to his use”: see **CONVERT**.

Stat. Def., Town and Country Planning Act 1971 (c. 78), s.290.

See **CHARITABLE USE**; **OWN SOLE USE**; **REASONABLE USE**; **RESULTING USE**; **SEPARATE USE**; **SOLE**; **SUPERSTITIOUS**; **USED**; **USING**; **USUAL**; **IN USE**; **DEVELOPMENT**; **OCCUPATION**; **USE AND OCCUPATION**; **WORK**.

USE AND BENEFIT. A legacy, by a person not in loco parentis, for the “use and benefit” of the legatee, does not indicate such a particular purpose as that there will be an ademption of it by a subsequent settlement of a like amount on the legatee by the same person (*Re Smythies* [1903] 1 Ch. 259). See further *Harris v. Grierson* [1922] 2 Ch. 359. Cp. **OWN USE AND BENEFIT**.

USE AND DISPOSAL. See **DISPOSAL**.

USE AND ENJOYMENT. See *Re Williamson* 94 L.T. 813, cited **USE**.

USE AND OCCUPATION. (1) A devised to his wife the income of freeholds at B and leaseholds at P, and bequeathed to her his furniture and effects in his house at E, and desired that she should “have the free use and occupation of the said house”; held, that she was absolutely entitled to the properties at B and P, but took only a life interest in the house at E (*Coward v. Larkman* 60 L.T. 1). See **OCCUPATION**; **RESIDE**; **ACTUAL USE OR OCCUPATION**.

(2) A direction by a testator that his widow should be entitled to “use and occupy” his house and furniture “for her own personal use and occupation” was held not to entitle her to let or sell the house and receive the rent or the proceeds of the sale, or to sell the furniture and retain the proceeds (*Re Anderson* [1920] 1 Ch. 175).

USE OR ENJOYMENT. See **IMMEDIATE USE OR ENJOYMENT**.

USE OR ORNAMENT. Articles of “household use or ornament”: see **HOUSEHOLD**.

USE OR PERMIT. Where a local board do not act themselves to create a nuisance, and are endeavouring to put in force their powers to effect a perfect system of drainage, it is no ground of action to an individual that the board do not take proceedings under their Acts to prevent persons from unlawfully draining into their sewers, in consequence of which draining an additional and serious nuisance is caused to that individual; and they cannot be said “to use or permit to be used” the sewers so as to cause a nuisance, by abstaining from taking such proceedings (*A.-G. v. Dorking* 20 Ch. D. 595).

See **PERMIT**.

USED. (1) A thing “used” for a particular purpose is not synonymous with its “being used,” or “use,” for that purpose; for, *semble*, such latter phrases connote, necessarily, an actual user, which “used” does not. Therefore, a place underground may have been “used” as a bakehouse at the commencement of the Factory Act 1895 (c. 37), and so exempt from s.27(3) of that Act, if that had previously been its purpose and actual use, though not then actually so used because untenanted, but the landlord of which was seeking to let it to a baker which he afterwards did (*Schwerzerhof v. Wilkins* [1898] 1 Q.B. 640).

(2) So, a Hackney carriage means a wheeled carriage “used in standing of plying for hire,” which does not mean “when being used,” for “used” in that connection indicates the purpose for which the carriage is to be used (*Hawkind v. Edwards* [1901] 2 K.B. 169, cited *HACKNEY CARRIAGE*).

(3) The words “used for the drainage” in s.343 of the Public Health Act 1936 (c. 49) defined the function of a pipe as a sewer and not its actual user. The test was not whether a pipe was being used for drainage but whether it could be, and accordingly a sealed off pipe was still a sewer (*Blackdown Properties v. Ministry of Housing and Local Government* [1967] Ch. 115). A channel can only be said to be “used” for drainage within the meaning of this section if drainage was at least one of its functions, and a culvert built under a railway line to drain land did not become used for drainage when, after building development in the area, it had to carry surface water from the buildings (*British Railways Board v. Tonbridge District Council* (1979) 78 L.G.R. 257).

(4) But “used” and “in use” (Caravan Sites and Control of Development Act 1960 (c. 62), s.13) have been held to be synonymous and not to cover discontinued use (*Bliss v. Smallburgh Rural District Council* [1965] Ch. 335).

(5) Fixtures, etc., “used” in any land, etc. (s.6(2), Bills of Sale Act 1882 (c. 43)), means things retained on the premises for use; therefore, a cab proprietor’s horses are not “plant” “used in” his mews, for their sole use is in the streets where the cabs are hired and the profits of the business are earned. They may be harnessed or unharnessed on the premises, but they are not used, for the purposes of the business, there (*per Esher M.R., London & Eastern Counties Loan Co. v. Creasy* [1897] 1 Q.B. 768, cited *PLANT*). See further *BROUGHT UPON*.

(6) Used “bona fide for any business,” under s.16, Finance Act 1910 (c. 35): see *Ferguson v. Inland Revenue Commissioners* [1917] 1 K.B. 193, cited *DWELLING-HOUSE*.

(7) “Laid out and used” as burial ground: see *Young v. Kingston-on-Thames Committee* [1906] 1 K.B. 338, cited *LAID OUT*.

(8) Ground not “already used” as a cemetery: see *Godden v. Hythe Burial Board* [1906] 2 Ch. 270, cited *ALREADY*.

(9) Building “used for the education of the poor”: see *Hadfield v. Liverpool* 80 L.T. 566, cited *EDUCATION*.

(10) Part of a factory or workshop “not used for any manufacturing process or handicraft” (Sched. 2, s.4, Factory and Workshop Act 1901 (c. 22)) connoted “a room never used for that purpose, either during the preceding hours of the day or during the time when the permitted overtime employment is being carried on” (*per Alverstone C.J., Smith v. Sibray* [1903] 2 K.B. 707).

(11) “Used” (Fats, Cheese and Tea (Rationing) (No. 2) Order 1946 (No. 1116), art. 8): see *Quaintways Restaurant v. Budd* [1948] 2 K.B. 231.

(12) Ship or vessel “used in navigation”: see *VESSEL; R. v. Southport* 62 L.J.M.C. 47, cited *SHIP*.

(13) "Used for the purposes of": see PURPOSE; PURPOSES; TRAFFIC; *Commissioner of Taxation v. St. Mark's* [1902] A.C. 416; *Tylecote v. Morton* 85 L.T. 692.

(14) "Used as a trade-mark"; see *Richards v. Butcher* [1891] 2 Ch. 536, cited TRADE-MARK.

(15) "Lands, buildings, works, materials, and plant, of the promotors suitable to, and 'used' by them for the purposes of their undertaking within such district" (s.43, Tramways Act 1870 (c. 78)): see *Re Manchester Carriage Co. and Ashton-under-Lyne* 68 J.P. 576; *Manchester Carriage Co. v. Swinton* 90 L.T. 795; affirmed in House of Lords [1906] A.C. 277; this last case decided that "within such district" referred to "undertaking," so that if the undertaking was within the district its property outside the district was included.

(16) "Used or proposed to be used" (s.3, Trade Marks Act 1905 (c. 15)): these words meant "used or proposed to be used in the United Kingdom"; see *Re Neuchâtel Asphalt Co.'s Application* [1913] 2 Ch. 291; see Trade Marks Act 1938 (c. 22), s.68.

"Used for charitable purposes" (General Rate Act 1967 (c. 9), s.40), see CHARITABLE PURPOSES.

"Used for ecclesiastical purposes" (Town and Country Planning Act 1971 (c. 78), s.56(1)), see ECCLESIASTICAL PURPOSES.

Boiler "used exclusively for domestic purposes": see DOMESTIC.

"Used or enjoyed": see APPURTENANCES; HELD; WAYS.

"Used or exercised": see ART; EXERCISE; USE.

"Provided and used": see PROVIDED.

"Used as an ordinary agricultural farm": see AGRICULTURAL.

"Place used" for betting, or for dancing: see PLACE; PUBLIC DANCING.

"Land used as a racecourse," see RACECOURSE.

"Land used only as a railway": see RAILWAY.

"Used for trade"; see TRADE.

USELESS. "Useless, and be no longer required for the purposes of such road" (s.57, Turnpike Act 1823 (c. 95)): see *R. v. Greenlaw* 4 Q.B.D. 447.

See REQUIRED.

USER. (1) "User" of trade mark: see *Re Eastex Manufacturing Co.'s Application* [1947] 2 All E.R. 55.

(2) A policy of insurance is in force in relation to the user of a vehicle if the owner's liability for accidents is covered by an insurance policy (*John T. Ellis v. Hinds* [1947] K.B. 475).

(3) Refusal to an assignment of a lease because the landlord wishes to prevent the creation of a statutory tenancy is not connected with the "user or occupation" of the premises (*Re Swanson's Agreement*) [1947] L.J.R. 169.

(4) "User" of a licence (Road Traffic Act 1930 (c. 43), s.112(1)(a)). See *R. v. McCardle* [1958] Crim. L.R. 50, cited USE, para. (31).

Stat. Def., Iron and Steel Act 1949 (c. 72), s.23(5); Resale Prices Act 1964 (c. 58), s.5(4); Restrictive Trade Practices Act 1976 (c. 34), ss.10(2), 19(2); Resale Prices Act 1976 (c. 53), s.14.

Area of user: see AREA.

New and unusual user: see NUISANCE.

Prior user: see ANTICIPATION; PUBLIC USE.

See NON-USER; PRESCRIPTION; USE.

USES. Statute of Uses 1535 (27 Hen. 8, c. 10). See **USE**.

USING. (1) Where a contract for works, *e.g.* for building a ship or a house, contains a clause enabling the contractee on default by contractor to complete the works, “using” therein such materials of the latter “as shall be applicable for the purpose”; the property in materials does not, under the word “using,” pass to the contractee until he has actually used, or at least has actually begun to use, them in such completion; merely appropriating them for the purpose of so using them will not suffice (*Baker v. Gray* 25 L.J.C.P. 161; *cp. Re Winter* 8 Ch. 225, cited **PROPERTY**).

(2) “Using” premises “for the purposes of” betting (s.3, Betting Act 1853 (c. 119)): see *Belton v. Busby* [1899] 2 Q.B. 380. See further **USE**, paras. (4), (5), (6), (7) and (8).

(3) Using a railway; “the word ‘using’ at the end of s.90, Railways Clauses Consolidation Act 1845 (c. 20), signifies using in any sense; and is not confined to using by sending engines and other carriages along the line. The section applies to all tolls without distinction, and unless ‘using’ includes using by sending goods, a distinction not warranted by the Act will be drawn between tolls for passengers engines and carriages on the one hand, and tolls for goods sent in the ordinary way on the other” (*per Lindley L.J.*, delivering the judgment *Manchester, Sheffield & Lincolnshire Railway v. Denaby Main Co.* 14 Q.B.D. 209; partly reversed in House of Lords, 11 App. Ca. 47; see also *Evershed’s Case* 3 App. Ca. 1029).

(4) To constitute “an arrangement for using” steam vessels so as to get a through traffic rate under s.11, Regulation of Railways Act 1873 (c. 48), the agreement between the railway company and the owner of the vessels had to be definite, and contain an obligation on the part of such owner to ply between the specified ports (*Caledonian Railway v. Greenock & Wemyss Bay Railway* 4 Ry. & Can. Traffic Ca., 70; see further *Ayr S.S. Co. v. Glasgow & South Western Railway* *ibid.* 81).

(5) “Using the trade of merchandise,” in the old bankruptcy Acts, meant that such “using” continued so long as the person did not pay his trade debts (*Ex p. Bamford* 15 Ves. 449; *per Jessel M.R.*, *Ex p. McGeorge* 20 Ch. D. 697). *Cp.* **CARRY ON**.

(6) The offence of fraudulently “using” a weighing machine (s.26, Weights and Measures Act 1878 (c. 49)) was not committed by selling, *e.g.* a packet of sugar, which had been weighed on a correct weighing machine but which was of less weight of sugar than the quantity demanded by the weight of the paper in which it was wrapped (*Stone v. Tyler* [1905] 1 K.B. 290); this section “points to some trick employed in the manipulation of the weighing machine, as such” (*per Alverstone C.J.*, *Stone v. Tyler* [1905] 1 K.B. 290). *Cp.* *King v. Spencer* 2 L.G.R. 984, and *Harris v. Allwood* 57 J.P. 7, both cited **WILFULLY**; see further **UNJUST**.

(7) It was “using” a net for catching salmon in contravention of s.36, Salmon Fishery Act 1865 (c. 121), to have it in a boat on a salmon river with the object of catching salmon, although it might not, as yet, have been put into the water: see *Moses v. Raywood* [1911] 2 K.B. 271.

(8) As to what constituted “using the premises for illegal or immoral purposes” within the meaning of s.4, Increase of Rent, etc. Restrictions (Continuance) Act 1923 (c. 7), see *Schneiders & Son Ltd. v. Abrahams* [1925] 1 K.B. 301. See also *Yates v. Morris* [1951] 1 K.B. 77; **NUISANCE**, para. (18).

Using a patent: see **USE**.

See **USE**; **USED**.

USQUE AD. See **QUAMDIU**.

USUAL. (1) To determine whether a clause, condition, or thing, is "usual," the first inquiry is: Is the subject-matter before, or within, recent memory?

(2) Where the subject-matter is something enacted or created "before" recent memory, almost any kind of traditive experience may be given in proof. A conspicuous example was furnished when the ornaments rubric of the Church came in question, and the courts, in order to ascertain what is now lawful, had to determine what ornaments were "in use" by authority of Parliament in the second year of Edward VII. There, the literature of the age of the Reformation and the time immediately subsequent, was received in proof (*Elphinstone v. Purchas* L.R. 3 A. & E. 66, L.R. 3 P.C. 245).

(3) Where the subject-matter is something enacted or created "within" recent memory the principles by which what is "usual" is to be determined, are not so easy of statement. What is "usual" is a fact; not a conclusion of law (*Hampshire v. Wickens* 7 Ch. D. 555). But just as the question of fact of what is reasonable notice to quit as between masters and domestic servants has in process of time crystallised into a set formula of a month's notice or a month's wages, so the courts take judicial notice of some clauses as being "usual" and reject others. In those cases, however, where no such judicial conclusion has been arrived at, the question of what is a "usual" clause, condition, or thing, is a fact to be established by proof, having regard to (a) the subject-matter, (b) its locality, (c) its time of arising, and (d), sometimes, its circumstances.

(a) The subject-matter must be considered where it is of a special nature, e.g. leases of property used for particular trades; "as in the case of leases of public-houses where the brewers have their own forms of leases, and the usual covenants there would mean the covenants *always inserted in the leases of the particular brewer*" (*per* Jessel M.R., *Hampshire v. Wickens* 47 L.J. Ch. 245: should not the words italicised read, "usually inserted in the leases of brewers in the neighbourhood"? In *Hodgkinson v. Crowe* 44 L.J. Ch. 681, James L.J. said, "You cannot by the usage between some landlords and some tenants for 10, 20, or even 50 years, make a change in the law"). So, also referring to a lease of a public-house, Tenterden C.J., in *Bennett v. Wormack* (6 L.J.O.S.K.B. 175), said "That which is usual in leases of one description of property may not be so in leases of another."

(b) As to locality. In *Wilbraham v. Livesey* (18 Bea. 210), Romilly M.R., said that in a lease of a house in Grosvenor Square, London, there might be inserted different covenants from those in a lease in a trading locality. So, in *Hodgkinson v. Crowe* (L.R. 19 Eq. 591), Bacon V.-C., admitted evidence of what clauses were usual in mining leases in the district where the property was situate. So also did Fry J., in *Strelley v. Pearson* (15 Ch. D. 113). See also *Boardman v. Mostyn* 6 Ves. 467, 471; *Harwood v. Silber* 30 Ch. D. 404.

(c) As to time. "Usual covenants may vary (in their meaning) in different generations. . . . What is well known in one time may in another cease to be usual" (*per* Jessel M.R., *Hampshire v. Wickens* 7 Ch. D. 555).

(d) As to circumstances. "I do not think that the word 'usual' is in many cases to be read with reference to the surrounding circumstances: but I agree that the court has a right to know, and is bound to know, all the material facts which were known to the parties at the time when the agreement, deed, document, will, or whatsoever it may be was entered into or made" (*per* Kay J., *Hart v. Hart* 50 L.J. Ch. 704, 705. In the report of this passage in the 18 Ch. D. 692, it runs, "I 'do' think," and this would seem the correct reading). But in that case evidence of negotiations preliminary to an agreement for "usual" clauses was rejected. In *Eadie v. Addison* (52 L.J. Ch. 80) the circumstances that an intending lessee was a brewer who lived a long

distance from the public-house which was the subject of a demise agreement, and that it was not at all likely that the brewer was going to carry on the business at the public-house himself, was strongly relied on by the court in rejecting a clause against underletting, the agreement there having stipulated for "proper clauses."

(4) In cases not already judicially determined, the proof of what would be "usual" clauses, having regard to the special subject, its locality, or circumstances, would as a rule be furnished by the testimony of such living witnesses, whoever they might be, that might happen to have the information (*Hodgkinson v. Crowe* sup.). But where the question is of a general character the proof of what are "usual" clauses may be furnished by—

(a) Considering the provisions of Acts of Parliament, *in pari materia* (*Hodgkinson v. Crowe* 10 Ch. 622).

(b) The evidence of conveyancing counsel (*Hart v. Hart* 18 Ch. D. 670), and, possibly, of solicitors as being "the most likely to possess extensive and accurate knowledge on this subject" (27 S.J. 130).

(c) Books of conveyancers' forms or text books (*Doe d. Jersey v. Smith* 7 Price, 281, 282; *Hampshire v. Wickens* sup.; *Hodgkinson v. Crowe* sup.; *Hart v. Hart* sup.). As regards this latter class of evidence it has been thus questioned, "Books of precedents are not conclusive evidence of the general practice. . . . They provide a precedent in the form in which it may be presented by the party who has to prepare the draft . . . It is impossible to cross-examine a precedent book" (27 S.J. 130). To which it may be added, "'usual covenants' does not mean universally inserted" (Dwar. (2nd ed.) 692). See further inf., para. (5).

(5) The question as to what are "usual" clauses arises most frequently as regards leases.

The following passage from *Davidson's Precedents* (3rd ed.), "Leases," Vol. 5, Pt. 1, p. 53, was quoted with approval by Jessel M.R., in *Hampshire v. Wickens* sup.: "The result of the authorities appears to be that in a case where the agreement is silent as to the particular covenants to be inserted in the lease, and provides merely for the lease containing usual covenants, or, which is the same thing, is an open agreement without any reference to the covenants; 'and there are no special circumstances' justifying the introduction of other covenants, the following are the only clauses which either party can insist upon, viz.: Covenants 'by the lessee'—

"(1) to pay rent;

"(2) to pay taxes, except such as are expressly payable by the landlord;

"(3) to keep and deliver up the premises in repair; and

"(4) to allow the lessor to enter and view the state of repair. A clause for re-entry in default of payment of rent.

"The usual qualified covenant 'by the lessor' for quiet enjoyment."

(6) See also *Hodgkinson v. Crowe* (sup.); and the rule as regards forfeiture clause was not altered by s.14, Conveyancing Act 1881 (c 41) (see Law of Property Act 1925 (c 20), s.146), although thereunder the court might relieve against forfeiture for other causes than non-payment of rent (*Re Anderton and Milner* 45 Ch. D. 476).

(7) As to the covenant for payment of taxes, see *Canadian Pacific Railway v. Toronto* [1905] A.C. 33.

(8) In considering what other clauses may be insisted on as "usual" in leases the judgment in the leading case of *Church v. Brown* (15 Ves. 258) should be kept in view. Lord Eldon there (p. 268) expressed himself as follows: "The safest rule for property is that a person shall be taken to grant the interest in an estate which he proposes to convey, or the lease he proposes to make, and that 'nothing which

flows out of that interest as an incident is to be done away by loose expressions,' to be construed by facts more loose; that it is upon the party who has foreborne to insert a covenant for his own benefit to show his title to it; and that it is safer to require the lessor to protect himself by express stipulation, than for Courts of Equity to hold that contracting parties shall insert not restraints expressed by the contract or implied by law, but such, more or less in number, as individual conveyancers shall from day to day prescribe, as proper to be imposed upon the lessee'' (see this passage cited *Hodgkinson v. Crowe* 44 L.J. Ch. 682). The question what are "usual covenants" in a lease is a question of fact to be decided in the circumstances of the particular case. On the evidence, a covenant to do nothing to the inconvenience of occupiers of neighbouring premises was held to be an unusual covenant in a lease of a single house, and a proviso for re-entry on breach of any of the covenants in the lease was also held to be unusual (*Flexman v. Corbett* [1930] 1 Ch. 672).

(9) It would seem that the principles of *Church v. Brown* sup. would prevent a lessor of land from insisting on a reservation of timber, minerals, or game (but see *GROUND GAME*) unless such a reservation were expressly provided by the contract; and in view of those principles it is perhaps permissible to question the practical value of the suggestions of Bacon V.-C., towards the conclusion of his judgment in *Hodgkinson v. Crowe* as to what clauses are customary in mining leases (L.R. 19 Eq. 591). The reservation in a mining lease of liberty to the lessor and his agents and workmen to enter and examine the workings can be insisted on as usual (*Blakesley v. Whieldon* 11 L.J. Ch. 164); and in a mining lease, granted under a power, a power enabling the lessee to build conveniently placed cottages for workmen is "necessary or usual" (*Morris v. Rhydydefed Co.* 28 L.J. Ex. 119).

(10) A clause in a colliery lease in Derbyshire (or, *semble*, anywhere else) to entitle the lessee "to determine the lease" when the mine cannot be worked to a profit, is not usual (*Strelley v. Pearson* 15 Ch. D. 113).

(11) A proviso "suspending rent" in case of fire is not "usual" (*Doe d. Ellis v. Sandham* 1 T.R. 705). Rent is not even suspended where the landlord has received compensation for injury by fire under a policy effected by him with an insurance company (*Leeds v. Cheetham* 1 Sim. 146; *Lofft v. Dennis* 28 L.J.Q.B. 168).

(12) The extract from Davidson above given (para. (5); see also Woodf. (24th ed.) 186) shows that it was usual for a tenant to covenant to pay taxes "except such as are expressly payable by the landlord"; e.g. as included in such exception, landlord's property tax (Income Tax Act 1842 (c 35), ss.73, 103)), the proportionate part of land tax (Land Tax Act 1796) (c 5), s.17; see thereon Woodf. (24th ed.) 664), sewers rate (Woodf. (24th ed.) 641), one half the cattle plague rate (Contagious Diseases (Animals) Act 1868 (c 70), s.89), special paving rates under Metropolis Management Acts (*Allum v. Dickinson* 9 Q.B.D. 632), and tithe rent charge (Tithe Act 1836 (c 71), s.80, *Parish v. Sleeman* 29 L.J. Ch. 96). Apt words in the agreement might have thrown all the foregoing landlord's taxes on the tenant, except the landlord's property tax and tithe rent charge. See *IMPOSED; NET; OUTGOING; TAXES*.

(13) As regards the covenant to repair, the lessee is not (under an agreement for "usual" clauses) entitled to have introduced into the covenant the words, "damage by fire or tempest excepted" (*Sharp v. Milligan*, No. 2, 23 Bea. 419; *Kendall v. Hill* 6 Jur. N.S. 968; Woodf. (24th ed.), 187), not even though it be proved that it is the practice in the locality for the landlord to insure (*Thorpe v. Milligan* 5 W.R. 336); nor, *semble*, to have inserted the words, "reasonable wear and tear excepted" (27 S.J. 177).

(14) Default in payment or rent (query also bankruptcy of lessee, *Church v. Brown* 15 Ves. 268; *Haines v. Burnett* 27 Bea. 500; but certainly not the words "if any execution should issue against him," *Hyde v. Warden* 3 Ex. D. 72) is the only "usual" ground of FORFEITURE (*Hodgkinson v. Crowe* 10 Ch. 622; s.18(7), Conveyancing Act 1881 (c 41)—see Law of Property Act 1925 (c 20), s.99(7)); except where the use, or non-use, of the premises for particular purposes is of the essence of the bargain between the parties, e.g. a proviso in a lease of a public-house for re-entry in the event of the premises being used for carrying on another business than that of a licensed victualler, which is a "usual" proviso (*Bennett v. Wormack* 6 L.J.O.S.K.B. 175; see hereon Seton, 2277).

(15) A covenant "against assigning," or underletting, is not "usual," not even if the stipulation be offered that the landlord's assent shall not be unreasonably withheld (*Henderson v. Hay* 3 Bro. C.C. 632; *Church v. Brown* 15 Ves. 258; *Hodgkinson v. Crowe* sup.; which last case overrules *Haines v. Burnett* 29 L.J. Ch. 289, see per Jessel M.R., *Hampshire v. Wickens* 7 Ch. D. 555; see also *Re Landers and Bagley* [1892] 3 Ch. 41; *Bishop v. Taylor* 60 L.J.Q.B. 556; *Wilcox v. Redhead* 49 L.J. Ch. 539; *Buckland v. Papillon* 2 Ch. 67), nor is it a "usual" clause which requires a lessee of a public-house to give notice to the lessor or his solicitor of an assignment of the lease (*Brookes v. Drysdale* 3 C.P.D. 52).

(16) Although the law is thus clear against the usuality of clauses restricting assignment, yet when a clause restricting assignment is in fact inserted in a lease and forfeiture is prescribed to follow on its breach, that is not a forfeiture against which relief is provided by the Conveyancing Act 1881 (c 41), s.14(6) (see Law of Property Act 1925 (c 20), s.146(8)), on which see *Barrow v. Isaacs* [1891] 1 Q.B. 417, cited UNREASONABLY. NO FINE is to be exacted on a licence to assign, unless expressly provided for in the lease (Law of Property Act 1925 (sup.), s.144).

(17) Exceptionally, a lease may so distinctly indicate the requirement of a personal occupation by the lessee or other person as to imply a condition against underletting (*Kehoe v. Lansdowne* 62 L.J.P.C. 101).

(18) A question has been raised (27 S.J. 177) as to whether a covenant obliging the "lessee to insure" could be insisted on as "usual." The opinion there expressed is that it could; Mr. Davidson says that "probably" it could not (Prec. (3rd. ed.), "Leases," Vol. 5, pt. 1, p. 53); and to that effect is *Wilcox v. Redhead* sup.

(19) Probably the most difficult question on what "usual" clauses might be insisted on in leases, would arise as to "restrictions" prohibiting the absolutely unfettered use and enjoyment of the premises during the term at the free will of the lessee. It is common learning to say that, generally speaking, no such restriction could be insisted on (*Church v. Brown* and *Hodgkinson v. Crowe* sup.). A covenant to do nothing to the inconvenience of occupiers of neighbouring premises was held to be an unusual covenant in a lease of a single house, and a proviso for re-entry on breach of any of the covenants in the lease was also held to be unusual (*Flexman v. Corbett* [1930] 1 Ch. 672). But where, as previously suggested, the use, or non-use, of the premises for particular purposes is of the essence of the bargain between the parties, there it would be proper and "usual" to provide for such use, or against such non-use. Such a doctrine would seem to be well within the meaning of "special circumstances" referred to in the extract given above from Davidson and the commentary of the M.R. thereon in *Hampshire v. Wickens*. No doubt the application of the doctrine just enunciated would, in many cases, be difficult. But in *Bennett v. Wormack* (sup.) it was held that a lessor of a public house is entitled, as a "usual" clause, to have a proviso forfeiting the lease in case of the premises being used for a business other than that of a licensed victualler; and *a fortiori* he would

be entitled to a "covenant" against such a use; and if so, why should he not be entitled to a similar covenant with an accompanying proviso for re-entry for the purpose of ensuring that the business of a licensed victualler shall be carried on uninterruptedly during the whole of the term and the necessary certificates and licences duly taken out by the lessee? This would be only the completion of the rule of which the other part was established by *Bennett v. Wormack*. Without this further provision a lessee might destroy or imperil that part of the property—its character of monopoly as licensed premises—which is the subject-matter of the lease, and the upholding of which may fairly be regarded as of the essence of the bargain between the parties. But it is not "usual" covenant, even in a public house lease, which requires the lessee to reside on the premises and personally conduct the business (*Re Lander and Bagley sup.*).

(20) But besides public-houses, may not there be other property the peculiar characteristics of which would as much be entitled to protection? Thus in *Hyde v. Warden* (3 Ex. D. 72; see thereon *Reeve v. Berridge* 20 Q.B.D. 523) a covenant not to mow meadow land more than once a year was held not unreasonable or unusual; see further as to farming leases, *Bell v. Barchard* 16 Bea. 8.

(21) Observe, however, that in *Midgley v. Smith* [1893] W.N. 120, Romer J., held that covenants by a lessee (1) prohibiting other erections than those standing at the date of the lease, (2) prohibiting user of the house as an asylum, dispensary, or other similar institution, or otherwise than as a private house, (3) for registering assignments with the lessor and paying a fee, and (4) for rebuilding in case of fire to the satisfaction of the lessor's architect, were unusual and unreasonable covenants in the lease of a detached residence with a garden, situate at Putney.

(22) Conditions in restraint of trade are, generally speaking, not "usual" (*Propert v. Parker* 3 My. & K. 280; *Van v. Corpe* 6 L.J. Ch. 208; *Wilcox v. Redhead* 49 L.J. 539; *Wilbraham v. Livesey* 18 Bea. 206); but, as was suggested in the last-named case, supposing a house be situate in the most fashionable part of London, with circumstances under which to carry on trade in it would be seriously to diminish its value; would not that be *pro tanto* destroying the thing leased, against which the lessor would be entitled to a covenant and clause of forfeiture as a fair and "usual" term of the contract? So, too, of premises where a business of very long standing has been carried on, and the continuance of which business on the premises demised would be fairly collected as of the essence of the bargain. So, too, perhaps, where premises are specially and exclusively adapted for a special kind of occupation, that kind of occupation ought to be preserved by proper "usual" clauses. So again, where the continuance of workings goes to the preservation of the thing demised—e.g. pumping water from a mine—that would seem of the essence of the bargain which the lessor should be able to insist on providing for (see *Strelley v. Pearson* 15 Ch. D. 113).

(23) It may be added that an agreement for a lease, which stipulates that the lessee is "not to use" the premises for other than a specified trade, and providing for all usual covenants, does not warrant the insertion in the lease of an affirmative covenant by the lessee that he will "carry on" such trade during the term (*Doe d. Bute v. Guest* 15 M. & W. 160).

(24) As to what covenants and conditions are not usual, and which it is the duty of a vendor to disclose, see *Re Haedicke and Lipski* [1901] 2 Ch. 666, cited CONSTRUCTIVE; *Crosse v. Morgan* 60 L.T. 703, inf.; *Melzak v. Lilienfield* [1926] Ch. 480.

(25) On an assignment of a lease, usual covenants by the assignor are given in Conveyancing Act 1881 (c. 41), s.7(1)(B), (D) (see Law of Property Act 1925 (c. 20), s.76(1)(B), (D), Sched. 2); and by the assignee, that he will thenceforth pay

the rent and fulfil the lessee's covenants thenceforth to be performed or observed, and keep the assignor and his representatives indemnified and harmless therefrom.

(26) Leases under powers. Where the power requires that "the usual and reasonable covenants" shall be inserted, the lease must contain covenants as were contained in leases of the same property at the time of the creation of the power; otherwise the power will not be well executed (*Doe d. Egremont v. Stevens* 6 Q.B.D. 208); but, there the court "inclined to think" that such words in a power as "usually so leased" would not prevent the joining in one lease of tenements that had generally been let separately, provided all the tenements were comprised within the power. See further *Doe d. Egremont v. Williams* 11 Q.B. 688; Woodf. (24th ed.), 56.

(27) As to "usual" clauses in underleases, see *Williamson v. Williamson* 9 Ch. 729; *Haywood v. Silber* 30 Ch. D. 404.

(28) As regards deeds in general: what is "usual" has (when the point is uncovered by authority) to be determined "according to the practice and customs of conveyancers in such cases" (*per* Kay J., *Hart v. Hart* 18 Ch. D. 670; *Doe d. Jersey v. Smith* 7 Price, 281, cited ante, para. (4)(c)). In *Hart v. Hart*, it was held that the *dum casta* clause, in deed of separation between husband and wife securing an allowance to the latter, is not "usual" (see also as to practice in matrimonial causes, *Gandy v. Gandy* 7 P.D. 168, on which case see *Bishop v. Bishop* [1897] P. 138; see further *Harrison v. Harrison* 12 P.D. 130; *Lander v. Lander* [1891] P. 161, commented on in *Squire v. Squire* [1905] P. 4; *Wood v. Wood* [1891] P. 272; *Kettlewell v. Kettlewell* [1898] P. 138; *Smith v. Smith* [1898] P. 28; but see *Edwards v. Edwards* [1894] P. 33; see also *Brailey v. Brailey* [1922] P. 15, where it was held that a covenant by a wife in a separation deed to indemnify the husband against antecedent debts was not a usual covenant); but a clause that a trustee shall be found for the wife "who will enter into such covenants as in such a deed a trustee usually enters into on behalf of the wife with the husband" (*Hart v. Hart* sup.) is "usual." See DUM.

(29) A clause providing for a three months' notice prior to sale is "usual" in a mortgage (*Craddock v. Rogers* 53 L.J. Ch. 968); see also s.103, Law of Property Act 1925) (c. 20).

(30) A clause in a mortgage preserving the right to consolidate, and excluding s.17, Conveyancing Act 1881 (c. 41), was not "usual" (*Farmer v. Pitt* [1902] 1 Ch. 954, cited REQUIRE). See Law of Property Act 1925 (c. 20), s.93.

(31) As to usual clauses in partnership articles: see Lindley P. (11th ed.), 500 et seq. The cases there digested, though full of valuable suggestions as to what ought to be inserted in partnership articles, hardly lay down rules for determining what clauses would be judicially inserted under an agreement stipulating for "usual" clauses. Still they throw much light even on that difficult question.

(32) As to the usual covenants by a purchaser, on a conveyance of freeholds subject to conditions as to user, see *Re Poole and Clark* [1904] 2 Ch. 173; on an assignment of leaseholds, see *Harris v. Boots* [1904] 2 Ch. 376; *Reckitt v. Cody* [1920] 2 Ch. 452.

(33) The following are usual powers in settlements pursuant to articles: Leasing for 21 years; sale and exchange; maintenance and advancement (but not HOTCHPOT); varying securities; appointment of new trustees; partition where property joint; leasing mines; building leases where the land is fit for building, unless mere occupation leases for (say) 21 years have been expressly prescribed and then, on the principle *expressio unius exclusio alterius*, building leases would be excluded (Lewin (14th ed.), 547, 548, and cases there cited). Powers to jointure or other

powers to confer personal privileges would “not,” generally speaking, be “usual” (*ibid.* (15th ed.) 520). See also Settled Land Act 1925 (c. 18), ss.26, 38, 39, 41, and Law of Property Act 1925 (c. 20), s.182. See thereon Lewin (14th ed.), 520, 521. See further Macqueen on Husband and Wife (3rd ed.), 240. *Semble*, a covenant by an intended wife to settle her after-acquired property, is not “usual” in a marriage settlement (*Re Maddy* [1901] 2 Ch. 820).

(34) In a re-settlement of entitled estates, *semble*, a name and arms clause (see NAME) is not “usual” (*Craven v. York* 101 L.T. 327).

(35) In an open contract to sell a lease, and even where the liability of the lessee to deliver in a good repair is excluded in the case of “fire,” it is not “usual” further to restrict such liability by adding the words “or other casualty” (*Crosse v. Morgan* 60 L.T. 703).

(36) As to when it is “usual” for a jury to allow interest, see *Toronto Railway v. Toronto* [1906] A.C. 117. Cp. CERTAIN TIME; DEMAND.

(37) The phrase in an agreement, “I assume . . . that the usual conditions of acceptance apply,” is meaningless (*Nicolene v. Simmonds* [1953] 1 Q.B. 543).

“Usual and proper” books of account: see BUSINESS TRANSACTIONS.

See PROPER; USUALLY.

USUAL ACCOUNT. Usual account, by, and as against, a mortgagee in possession: see *Mayer v. Murray* 8 Ch. D. 424; Fisher, ss.1764, 1765.

USUAL AGENCY TERMS. “Usual agency terms,” as between a country solicitor and his London agent, means that “the London agent is entitled to be paid by the country solicitor all his disbursements out of pocket. But there are a number of other charges which are known as ‘profit charges,’ and the question has been raised whether the London agent is entitled to half the profit made by the country solicitor, or only to half the ‘profit charges.’ We have consulted Mr. Ryland, the Taxing Master, and he has told us that the London agent is only entitled to half the ‘profit charges,’ *i.e.* the charges which do not involve any expenditure by him, and that the London agent has nothing to do with the profit made by the country solicitor” (*per* Cotton L.J., *Ward v. Lawson* 43 Ch. D 353; see 34 S.J. 190, 191). See further CLIENT.

USUAL AND CUSTOMARY MANNER. (1) “Where by the terms of a charterparty the ship is to ‘deliver’ the cargo ‘in the usual and customary manner,’ the obligation which attaches is only that the merchant and shipowner shall each use reasonable despatch in performing his part, and there is no implied contract that the discharge shall ‘at all event’ be performed in the time usually occupied at the particular port. Therefore, where, owing to a threatened bombardment, the authorities at the port of discharge refused for several days to allow the discharge of cargo to proceed, so that during those days neither party to the contract could perform his part of the contract, it was held that the loss from delay must fall on the shipowner” (1 Maude & P. 409, citing *Ford v. Cotesworth* L.R. 4 Q.B. 127; 5 *ibid.* 544; *Cunningham v. Dunn* 3 C.P.D. 443; *Ralli Bros. v. Compania Naviera, etc.* [1920] 2 K.B. 287). See further *Postlewaite v. Freeland* 5 App. Ca. 599; *Good v. Isaacs* [1892] 2 Q.B. 555; *The Jaederen* [1892] P. 351; Carver (12th ed.) 1245.

(2) “Load in the usual and customary manner” seems to apply only to the mode of loading when the vessel has arrived at the loading berth, and to have no reference to a detention outside the loading place (1 Maude & P. 408, citing *Tapscott v.*

Balfour L.R. 8 C.P. 46; *per Pollock* C.B., *Lawson v. Burness* 1 H. & C. 400; *per Brett* L.J. *Nelson v. Dahl* 12 Ch. D. 588; see also *Kay v. Field* 8 Q.B.D. 598; 10 *ibid.* 241; *The Alne Holme* [1893] P. 173). See further *Ardan S.S. Co. v. Weir* [1905] A.C. 501, cited CARGO.

See CUSTOMARY; DEMURRAGE; but see USUAL DESPATCH.

USUAL AND MOST APPROVED WAY. A compliance with a covenant to work mines “in the usual and most approved way” will not exonerate from responsibility on other grounds for letting down the surface (*Davis v. Treharne* 6 App. Ca. 460); see SURFACE.

USUAL BUSINESS. As to what is the “usual business of an hotel and tavern”: see *Simpson v. Westminster Palace Hotel Co.* 29 L.J. Ch. 561.

USUAL CERTIFICATE. “Usual certificate,” in a patent action: see *Bovill v. Hadley* 17 C.B.N.S. 435.

USUAL CLAUSES. See USUAL.

USUAL COLLIERY GUARANTEE. This phrase, in a charterparty and as determining the time for the commencement of loading, means the guarantee in use at the place where the contract is to be performed (*Shamrock S.S. Co. v. Storey* 81 L.T. 413); such a COLLIERY GUARANTEE being an engagement by a colliery proprietor as to the time in which and the conditions under which he will load a ship with coal.

USUAL COVENANTS. See USUAL.

USUAL DATE. In a merchant’s undertaking to give acceptances at the “usual date,” it was held that 6 months acceptances were not unusual, the jury not having found the contrary (*Laing v. Barclay* 1 L.J.O.S.K.B. 135).

USUAL DESPATCH. (1) “Where charterers contracted to load a cargo of coals on board ‘with usual despatch,’ it was held that they were bound to load the vessel with the usual despatch of persons who have a cargo ready for loading at the port; and that they were liable for a delay caused by a severe frost which rendered unnavigable the canal along which the coals were to be brought” (1 Maude & P. 317, citing *Kearon v. Pearson* 31 L.J. Ex. 1; see also *Adams v. Royal Mail Steam Packet Co.* 28 L.J.C.P. 33). But see USUAL AND CUSTOMARY MANNER; CUSTOMARY. See further *Ardan S.S. Co. v. Weir* [1905] A.C. 501, cited CARGO.

(2) “To be loaded with the usual despatch of the port”: see *Ashcroft v. Crow Co.* L.R. 9 Q.B. 540; see hereon *Postlethwaite v. Freeland* 5 App. Ca. 599; *Elliot v. Lord* 52 L.J.P.C. 23.

USUAL FORM. A transfer of a share in a company was held to be in the “usual common form,” although it did not give the address of the transferor or the denoting number of the share, both particulars being known to the directors and being, in the circumstances, wholly immaterial; for the requirement only means that “in everything which is material the transfer must be in the usual common form” (*per Buckley J., Re Letheby & Christopher* [1904] 1 Ch. 815).

USUAL MEDICAL ATTENDANT. In effecting a life policy, "usual medical attendant" implies more than one attendance and means the medical man best acquainted by experience with the constitution of the proposed life; therefore, if the person has been attended by a medical man for several years in serious disorders and afterwards takes another who has only seen him once or twice, the giving the name of the latter as his "usual medical attendant," without mentioning the circumstances under which he was attended by the other, is a wrong answer and will vitiate the policy (*Huckman v. Fernie* 7 L.J. Ex. 163). See further *Morrison v. Muspratt* 4 Bing. 60.

See MEDICAL; FAMILY PHYSICIAN.

USUAL PLACE OF ABODE. (1) A clause of forfeiture in case of the devisee not making the mansion-house "his usual common place of abode and residence," is not void for uncertainty (*Wynne v. Fletcher* 24 Bea. 430). See RESIDE.

(2) "Last or most usual place of abode" (s.1, Summary Jurisdiction Act 1848 (c. 43)): see *R. v. Smith* L.R. 10 Q.B. 604; LAST.

"Place of abode": see PLACE.

USUAL PLACE OF DISCHARGE. See *per* Buckley L.J., in *Leonis S.S. Co. v. Rank* [1908] 1 K.B. 499, cited ARRIVE.

USUAL PLACE OF RELIGIOUS WORSHIP. By s.32, Turnpike Roads Act 1822 (3 Geo. 4, c. 126), persons "going to or returning from his, her, or their usual place of religious worship, tolerated by law on Sundays," were exempted from turnpike toll; a Primitive Methodist minister had assigned to him the Sunday and other services of a district comprising the parish of F; the days on which, and the places at which, he was to attend were fixed at regular quarterly meetings of the Methodists and printed on a "plan"; according to this plan the minister had to preach at F on three Sundays each quarter, and elsewhere on other Sundays; held, that in going to F, on the Sundays indicated in the plan, to conduct the services there, the minister was going to his "usual place of religious worship," within the exemption (*Smith v. Barnett* L.R. 6 Q.B. 34; see further *Lewis v. Hammond* 2 B. & Ald. 206, cited PAROCHIAL CHURCH). The fact of the carriage being driven by another person than the minister would not, *semble*, subject the carriage to toll (28 J.P. 735; *Layard v. Ovey* L.R. 3 Q.B. 415).

See PUBLIC RELIGIOUS WORSHIP.

USUAL POWERS. See USUAL.

USUAL PROFESSIONAL CHARGES. See PROFESSIONAL CHARGES.

USUAL RENT. "Usual RENT" generally means, usual with reference to the subject-matter of the demise (*Doe d. Newnham v. Creed* 4 M. & S. 371, cited MOST RENT).

See ANCIENT RENT.

USUAL TENANT'S RATE. (1) S. 15, Union Assessment Committee Act 1862 (c. 103): see *Slaytor v. Newcastle-upon-Tyne Assessment Committee* [1926] 1 K.B. 172.

(2) "Usual tenant's rates and taxes" (Parochial Assessment Act 1836 (c. 96): see *Piggott v. Cuckfield Union Assessment Committee* [1921] 2 K.B. 647.

USUAL TITLE. “The usual title to land is 40 years” (*per* Farwell J., *Re Nesbit and Potts* [1905] 1 Ch. 400, citing *Re Cox and Neve* [1891] 2 Ch. 118, cited **TITLE**). This was reduced to thirty years by the Law of Property Act 1925 (c. 20), s.44, and to fifteen years by the Law of Property Act 1969 (c. 59), s.23.

USUAL TRADE NAME. A moneylender must register himself as a moneylender “under his own or usual trade name, and in no other name”. (s.2(1)(a), Moneylenders Act 1900 (c. 51)); see Moneylenders Act 1927 (c. 21), s.1. As to the meaning of this subsection, see *Whiteman v. Sadler* [1910] A.C. 514; but see *Whiteman v. Director of Public Prosecutions* [1911] 1 K.B. 824. See further *Wentworth Loan Co. v. Seftkowitch* 56 S.J. 54; *Stirling v. John* [1923] 1 K.B. 557; *Merz v. South Wales, etc. Society* [1927] 2 K.B. 366.

USUAL WAY. (1) “Any dispute to be settled by arbitration here, in the usual way”: see *Cooper v. Jessop* 43 Sc. L.R. 517; “in London, in the usual way”: see *Robertson v. Brandes* 43 Sc. L.R. 635.

(2) “On death of partner the assets to be valued either by mutual agreement or valuation in the usual way”: see *Horden v. Horden* 80 L.J.P.C. 15, Cp. **USUAL AND MOST APPROVED WAY**.

USUALLY. (1) A power to lease such lands as “theretofore usually demised,” or “so as such or more rent shall be reserved as the same lands are now let at,” will not as a rule apply to lands not previously leased (Watson Eq. (2nd ed.), 868). “The words ‘usually or accustomedly demised’ may have two senses; the one signifying the frequent or repeated act of leasing; the other, the common continuance of land in lease, though it has not been more than once demised, as in the case of lands leased for 500 years long since. And this is the more common acceptance of the words ‘usually demised’; though, in a literal sense, land once let is not land usually demised. Land twice demised is clearly included in that term” (Platt, 411, 412, citing *Tustian v. Roper* Jo. T. 27; Vaugh. 28); “though lands let by virtue of a contract from year to year for 3 years cannot be said to be usually demised, because it is but one lease, though renewable every year” (1 Platt 411, 412, citing 2 Rol. Ab. 262, pl. 14; see further Sug. Pow. (8th ed.), 730–732).

(2) “Upon the construction of the words ‘usually demised,’ it has been determined that they embrace every species of demise—at will, from year to year, or for years, or lives, and whether granted by parol or by deed, by copy of court-roll, covenant to stand seised, or any other instrument; but whatever the instrument, it must operate as a lease in the sense of the term ‘demise’ in the given power” (Sug. Pow. (8th ed.), 730, and cases there cited).

(3) Rights “usually enjoyed”: see **PASTURAGE**. “Usually held and enjoyed”: see **HELD**.

(4) “Usually occupied therewith” (s.10(2), Settled Land Act 1890 (c. 69)—see Settled Land Act 1925 (c. 18), s.65(1)) applies only to “lands (if any),” and not to “pleasure grounds and park” (*Pease v. Courtney* [1904] 2 Ch. 503, cited **PARK**). Cp. **THERewith**.

(5) “Usually rated” (s.27, Highway Act 1835 (c. 50)) meant such premises as had been usually actually rated in the parish for which the rate was made (*R. v. Rose* 6 Q.B. 153), in which case “rated” was kept to its literal meaning as distinguished from “rateable.” See further *R. v. Randall* 4 E. & B. 564.

(6) “Usually sold” (s.4, Bread Act 1836 (c. 37)), referred to the usage at the date of the statute (*Aerated Bread Co. v. Grigg* L.R. 8 Q.B. 355, cited **FRENCH BREAD**).

USUFRUCTUARY. “One that hath the use and reaps the profit of anything” (Cowel).

USURPATION. “Usurpation hath two significations in the common law: one, when an estranger that no right hath presenteth to a church, and his clerke is admitted and instituted, hee is said to bee an usurper, and the wrongful act that he hath done is called an usurpation.

“Secondly, when any subject doth use, without lawfull warrant, royal franchises, he is said to usurpe upon the king those franchises” (Co. Litt. 277 b).

See hereon Phil. Ecc. Law (2nd ed.), 345–350. Cp. **INTRUSION**.

USURPED POWER. (1) “ ‘Usurped power’ may have a great variety of meanings according to the subject-matter” (*per* Wilmot C.J., *Drinkwater v. London Assurance* 2 Wils. 363); in an exception to a fire policy of “invasion by foreign enemies, or any military or usurped power,” it means “an invasion of the kingdom by foreign enemies to give laws and usurp the government thereof, or an internal armed force in rebellion assuming the power of government and making laws and punishing for not obeying those laws” (*per* Bathurst J., *ibid.*); it was accordingly there held (Gould J., dissenting) that a tumultuous and destructive rising by a mob to reduce the price of provisions, was not a “usurped power” within the exception. See hereon *White, etc. Ltd. v. Eagle, Star & British Dominions Insurance Co.* 38 T.L.R. 615; see also **WAR**.

(2) The test for “usurped power” when these words are used in an exception clause in an insurance policy is whether acts amount to constructive treason, not whether acts amount to rebellion or are the acts of a *de facto* government. In Beirut in January 1976 there was usurpation of power consisting of arrogation, to and by the mob, of law making and enforcing powers properly belonging to the sovereign state. Those taking part had a sufficiently warlike posture, organisation and universality of purpose to constitute them an usurping power, and the exception therefore applied (*Spinney’s Centres and Doumet v. Royal Insurance Co.* [1980] 1 Lloyd’s Rep. 406).

Cp. **CIVIL COMMOTION**.

USURY (1) “ ‘Usury’ is a gaine of anything above the principall, or that which was lent, exacted only in consideration of the loane whether it bee corne, meat, apparrell, wares, or such like, as money” (Termes de la Ley, which see for remarks on 13 Eliz., c. 8).

(2) The statutes against usury were repealed by Usury Laws Repeal Act 1854 (c. 90), which gives a list of them. See hereon Bellot & Willis, on Unconscionable Bargains with Money Lenders. See **MONEYLENDER**.

See **ASSURANCE**.

UTENSIL. (1) “ ‘Utensil,’ anything necessary for our use and occupation; household stuffe” (Cowel).

(2) “By a devise of all utensils, it is agreed that plate and jewels do not pass” (Touch. 447, citing *Dame Latimer’s Case* 1 Dyer, 59 b, pl. 15; see also Wms. Exs. (13th ed.), 628). See further *Fitzgerald v. Field* 1 Russ. 427, cited **IN OR ABOUT**.

(3) Trade fixtures (removable if belonging to the tenant, *Elwes v. Maw* 2 Sm. L.C. 182, cited **FIXTURES**) demised with a paper mill and used in the manufacture of paper, were held not “utensils” within s.27, Paper Duties Act 1794 (c. 20).

whereby “the paper . . . and all the materials and utensils for the making thereof,” in the custody of a paper maker, became liable to the (abolished) paper duty (*A.-G. v. Gibbs* 3 Y. & J. 333).

UTILITARIAN PURPOSES. A bequest to be applied to “utilitarian purposes” is void for uncertainty (*Re Woodgate* 2 T.L.R. 674).

UTILITY “ ‘Utility,’ in patent law, does not mean either abstract utility, or comparative or competitive utility, or commercial utility. It was described by Grove J., in *Young v. Rosenthal* (1 Pat. Ca. 29, 34), as meaning an invention ‘better than the preceding knowledge of the trade as to a particular fabric.’ I adopt this definition if ‘better’ be understood as meaning better in some respects and not, necessarily, better in every respect; so that, *e.g.* an article which is good though not so good as that previously known but which can be produced more cheaply by another process, is better in that it is better in point of cost although not so good in point of quality” (*per Buckley J., Welsbach Co. v. New Incandescent Co.* [1900] 1 Ch. 843).

See **GENERAL UTILITY**; **PUBLIC UTILITY**; **cp. USEFUL**.

UTLAND. Tenemental land (Elph. 627, citing Spelm. *Inland*: Cowel).

UTMOST. (1) “Utmost efforts” to obtain payment from principal debtor before resort to surety: see *Holl v. Hadley* 4 L.J.K.B. 126.

(2) “Utmost endeavours to improve,” in a covenant in a lease: see *Croft v. Lumley* 6 H.L. Ca. 672.

(3) “Utmost endeavours to continue the house open as a public-house”: see *Linder v. Pryor* 8 C. & P. 518, stated Woodf. (24th ed.) 613.

See **BEST ENDEAVOURS**.

UTTER. (1) To “utter” a false document is to part with it, or tender it, or use it in some way, to get money or other benefit by means of it; and it is immaterial who is to have the money or get the benefit (*R. v. Shukard* Russ. & Ry. 200; *R. v. Radford* 1 Den. 59; *R. v. Ion* 21 L.J.M.C. 166).

(2) Forgery Act 1913 (c. 27), s.6(2): the posting of a letter containing a forged document is an uttering within the subsection at the place where the document was posted (*R. v. Owen* [1957] 1 Q.B. 174).

(3) As to uttering counterfeit, base, or foreign coin: see Coinage Offences Act 1861 (c. 99), ss.9–16, 20–23, 30. The phrase in these sections was “tender, utter, or put off”; but though that seems to show that to “tender” was not to “utter,” yet it was always determined that an allegation of “uttering and putting off” was satisfied by evidence of the tender of the coin (*R. v. Welsh* T. & M. 409). In *R. v. Page* (8 C. & P. 122), Abinder C.B., held that to give away counterfeit coin was not a criminal uttering; but that ruling was questioned in *R. v. Anon.* (1 Cox C.C. 250), in which last case the actual decision was that it was a criminal uttering for a man to give counterfeit coin to a woman as her payment for letting him have connexion with her. See further as *R. v. Page*, *R. v. Ion* 2 Den. 484. See **COUNTERFEIT COIN**.

(4) “Utter” (Coinage Offences Act 1936 (c. 16), s.5(3)). To “utter” a counterfeit coin, within the meaning of this section, it is necessary to pass it or to try to pass it as genuine (*Selby v. D.P.P.* [1972] A.C. 515). It was held that “utter” includes sale (*R. v. Walmsley, Dereya and Jackson* (1978) 67 Cr. App. R. 30).

Stat. Def., Forgery Act 1913 (c. 27), s.6.

UTTER BARRISTER. Member of the utter or outer Bar, because he sat "uttermost" on the forms which constituted the bar during a moot: Waterhouse's *Fortescutus Illustratus*, 544.

UTTERLY VOID. See **VOID**.

V

VACANT. (1) *Bona vacantia* are goods which belong to the first occupier or finder, being those “in which no one else can claim a property” (1 Bl. Com. 298). See *BONA*. See hereon *Dyke v. Walford* 5 Moore P.C. 439, cited *Re Barnett* [1902] 1 Ch. 847; *Re Bell* 52 S.J. 600; *Cunnack v. Edwards* [1896] 2 Ch. 679, and *Braithwaite v. A.-G.* [1909] 1 Ch. 510, both cited *PUBLIC CHARITY*.

(2) The site of old buildings recently pulled down (the rights attaching to which buildings were properly reserved), was not “vacant ground” as read into Metropolis Management Act 1862 (c. 102), s.75 (*Auckland v. Westminster Board of Works* 7 Ch. 597; see hereon *Barlow v. St. Mary Abbots* 27 Ch. D. 362; 11 App. Ca. 257; *Gilbart v. Wandsworth Board of Works* 60 L.T. 149); *secus*, of a forecourt or back garden not part of the actual site of the old buildings which had been pulled down when an intention was shown not to rebuild on their site (*London County Council v. Pryor* [1896] 1 Q.B. 465). See also *Lawson v. Wilkie* 34 Sc. L.R. 455, cited *BACK GREEN*. See *EMPTY*; *OCCUPATION*.

(3) (a) “Vacant possession” to be given on completion, in a vendor and purchaser contract, means actual, or physical, possession, as distinguished from merely letting the purchaser into the receipt of the rents and profits: see *POSSESSION*.

(b) Vacant possession is not given if sacks of cement are left by the vendor in the cellar of the property sold, so rendering the cellar unusable (*Cumberland Consolidated Holdings Ltd. v. Ireland* [1946] K.B. 264).

(c) “Vacant possession” in an advertisement for the sale of property means more than empty and unoccupied; the property must be capable of occupation by a purchaser (*Topfell v. Galley Properties* [1979] 1 W.L.R. 446).

VACARIA. “A void place, or waste ground” (Jacob).

Cp. *VACCARIA*.

VACATE. A building society’s statutory receipt would “vacate the mortgage, or further charge, or debt” (Building Societies Act 1874 (c. 42), s.43). *i.e.* it discharged the security so entirely that (in the absence of fraud, see *Lloyd’s Bank v. Bullock* [1896] 2 Ch. 192), the society could not re-open the account, even though a good deal too little had been paid by its borrowing member (*Harvey v. Municipal Building Society* 26 Ch. D. 273; *London, etc., Building Society v. Angell* 65 L.J.Q.B. 194; but see *Farmer v. Smith* 28 L.J. Ex. 226; *Sparrow v. Farmer* 28 L.J. Ch. 537). See also Law of Property Act 1925 (c. 20), s.115(9).

VACATING DIRECTORS. See *DIRECTOR*.

(1) Where the articles of a company provide that a director vacates his office if he be absent for a stated period, that does not include an involuntary absence, *e.g.* one caused by illness; the more reasonable construction is that the absence must be voluntary or deliberate (*per* Wright J., *Re London & Northern Bank* [1900] W.N. 114).

(2) In *Re London & Northern Bank* however, the actual words were, if the director “absents himself,” and, in a subsequent claim in the same liquidation, Wright J., said, “In the construction of an article like this, it has been held that the

expression ‘absents himself’ means something more than ‘is absent’ ”; and, construing the phrase “involuntary absence,” the learned judge held that it did not include a case where a director had “physically and medically an option to attend or not,” e.g. “if he were afraid that it might be injurious to his health to stay in England, that does not oblige him to go abroad” (*Re London & Northern Bank, McConnell’s Case* [1901] 1 Ch. 728). The period of absence does not begin to run until there is a board meeting which the director ought to have attended (*ibid.*). See further *Kershaw v. Shoreditch* 95 L.T. 55, cited **ABSENT**.

(3) The provision—e.g. in Companies Act 1862 (c. 89), Table A, Art. 57 (see now Companies (Alteration of Table A, etc.) Regulations 1984 (No. 1717))—for vacating the office of director operates automatically and *ipso facto* as soon as the event occurs, and disqualifies for the term for which the director has been elected, but does not disqualify him for re-election, unless the disqualifying event be of a continuing kind as distinguished from one that has been completed (*Re Bodega Co.* [1904] 1 Ch. 276, distinguishing *Turnbull v. West Riding Athletic Club* 70 L.T. 92).

VACATION. (1) The statute 28 Hen. 8, c. 11, s.3, which gives the profits of every benefice “during vacation” to the next incumbent, meets only “the case of a living actually vacant, vacated either by death, by resignation, or by deprivation,” and does not apply to a living “voidable and perhaps actually void, yet not in fact vacant, the rector still continuing in possession” (*Halton v. Cove* 1 B. & Ad. 538).

(2) “Time of vacation” of the courts, held to mean such time as the court is not sitting (*Walsh v. Grier* Ir. Rep. 4 Eq. 303; *Blake v. Blake* 8 Ir. Rep. 505). See hereon R.S.C., Ord. 64.

VACCARIA. “By *vaccaria* in law is signified a dairy-house, derived of *vacca*, the cow. In Latin it is *lactarium*, or *lactitium*; and *vaccarius* is mentioned in Domesday” (Co. Litt. 5 b). Also “a house to keep cows in” (Cowel).

Co. **VACARIA.**

VAGABOND. (1) “‘Vagabonds’ are idle and unprofitable men” (Termes de la Ley).

(2) “The idea of leading a wandering and vagabond life is not now at all an ingredient in the description of a rogue and vagabond,” within the Vagrancy Act 1824 (c. 83) (*per* Cleasby B., *Monck v. Hilton* 46 L.J.M.C. 168). It seems to have lost that meaning as long ago as the time of Richard 2 (see **FAITOUR**); so Cowel says “‘vagabond’ is one that wandreth about, having no certain dwelling; rogues, vagabonds, and sturdy beggars are all one”; they are all classed in the definition clause, s.5, 14 Eliz., c. 5.

See **ROGUE AND VAGABOND**.

VAGUE. (1) An assignment or contract is not “vague” merely because it is indefinite, or uncertain, or very wide in its terms: “vague,” in this connection, means that which is incapable of being ascertained when the instrument comes to be enforced.

(2) Language has been used with regard to assignments of, and contracts relating to, future property “which tends to confuse the idea of vagueness in the contract itself, with that sort of necessary uncertainty which, at the time when the contract is made, is more or less involved in the idea of futurity. ‘Vagueness’ is a misleading term. A contract may be too vague ‘in itself’ to be understood; and on that ground it is enforceable neither at law nor in equity. But in the case of a contract to assign future property when the money has been paid, if, when at the time of the contract

coming to be enforced, the property has fallen into the possession of the assignor, and is of such a character and is sufficiently ascertained to admit of the contract being enforced in equity, there is no necessary vagueness" (*per* Bowen L.J. *Re Clarke, Coombe v. Carter* 36 Ch. D. 348; see also *Tailby v. Official Receiver* 13 App. Ca. 523, especially judgment of Lord Herschell; *Re Kelcey* [1899] 2 Ch. 530, cited ALL). See hereon *Re Reis* [1904] A.C. 442, cited LIABILITY; PUBLIC UTILITY; RELIGIOUS; UNSEEMLY. Cp. USEFUL. See also *South Eastern Railway v. Associated Portland Cement Manufacturers* [1901] 1 Ch. 12, cited PERPETUITY.

See UNCERTAIN.

VALID. If a statute makes a document "valid and binding," it is valid and binding in all its parts and no objection can be taken to it on the ground of remoteness or uncertainty (*Manchester Ship Canal Co. v. Manchester Racecourse Co.* [1900] 2 Ch. 352). Cp. OBLIGATORY. See VOID.

VALID CONTRACT. As to what is a valid contract for the sale of realty so as to effect a CONVERSION, see *per* Jessel M.R., *Lysaght v. Edwards* 2 Ch. D. 507.

VALID LEASE. (Rent and Mortgage Interest Restrictions Act 1923 (c. 32), s.2(2).) "Valid" did not mean "at a rent not more than is chargeable under the Act" (*Quinlan v. Avis* 149 L.T. 214).

VALID NOMINATION. "Valid nomination" (Municipal Corporation Act 1882 (c. 50), s.56; see now Representation of the People Act 1949 (c. 68), Sched. II, Local Election Rules, r. 13) "includes a nomination, formally valid upon the face of it, which is nevertheless a nomination of a person, in fact, disqualified for being elected" (*per* Kennedy J., *Hobbs v. Morey* [1904] 1 K.B. 74, abbreviating definition of Lord Watson in *Pritchard v. Bangor* 13 App. Ca. 252). See *Harford v. Lyskesy* [1899] 1 Q.B. 582, cited CANDIDATE.

VALID NOTICE. Valid notice of increase of rent (Increase of Rent, etc., Restrictions Act 1920 (c. 17), s.3(2)): see *Penfold v. Newman* [1922] 1 K.B. 645. See also Rent Restrictions (Notices of Increase) Act 1923 (c. 13).

VALIDITY. Vendor and purchaser summons on a matter "not being a question affecting the existence or validity of the contract" (Vendor and Purchaser Act 1874 (c. 78), s.9; see Law of Property Act 1925 (c. 20), s.49): see *Re Jackson and Woodburn* 37 Ch. D. 44, *Re Wallis and Barnard* [1899] 2 Ch. 515; *Re Hughes and Ashley* [1900] 2 Ch. 595, cited WAYS.

See REGULARITY.

VALUABLE. (1) "A valuable consideration, in the sense of the law, may consist either in some right, interest, profit, or benefit, accruing to the one party, or some forbearance, detriment, loss, or responsibility given, suffered, or undertaken by the other.—Com. Dig. *Action on the Case, Assumpsit*, B. 1–15" (*per* Lush J., *Currie v. Misa*, L.R. 10 Ex. 153; affirmed, 1 App. Cas. 554; cited and adopted, *Fleming v. New Zealand Bank* [1900] A.C. 577).

(2) (a) A "valuable consideration" may be money or money's worth; and in this connection "valuable" means real, as distinguished from a consideration that is merely illusory or nominal; but it does not mean equivalent. A debt not yet payable may be a valuable consideration (*Davies v. Bolton* [1894] 3 Ch. 678). For a debt to

be a valuable consideration for a security or obligation there must be an agreement express or implied to give time or some further consideration, or else there must be an actual forbearance which *ex post facto* may become the consideration: see *Wigan v. English & Scottish Life Assurance* [1909] 1 Ch. 291; see also FORBEAR; *Re Wethered* [1926] Ch. 167. Marriage generally is a valuable consideration for a settlement (see hereon *Re Rees* [1904] 2 K.B. 769, cited LIABILITY; *Re Behrend* 55 S.J. 459); but not necessarily so if contracted with the settlor's concubine, nor, indeed, in any case where there is evidence of an intent, of which the wife is cognisant, to make the celebration of marriage part of a scheme to protect property against creditors (*Colombine v. Penhall* 1 Sm. & G. 228; *Bulmer v. Hunter* L.R. 8 Eq. 46; *Re Pennington* 5 Morr. 216).

(b) As to what is a "valuable consideration," within Bankruptcy Act 1883 (c. 52), s.47(1) (see now Bankruptcy Act 1914 (c. 59), s.42), see *Re Tetley* 66 L.J.Q.B. 111; see hereon VOID.

(c) A bona fide compromise is valuable consideration for the purposes of s.45(1) of the Bankruptcy Act 1914 (c. 59) (*Re Cole* [1931] 2 Ch. 174; *Re Maundy Gregory* [1935] Ch. 65, 73). A bank which accepts for collection a cheque drawn in favour of a customer with an overdraft obtains an immediate lien, and this is a transaction for "valuable consideration" protected by this section (*Re Keever (A Bankrupt), ex p. Trustee of the Property of the Bankrupt v. Midland Bank* [1967] Ch. 182).

(d) As to what was a "valuable consideration," within Fraudulent Conveyances Act 1571 (c. 5) (see now Law of Property Act 1925 (c. 20), s.172), see GOOD; *Bayspoole v. Collins* 6 Ch. 228.

(e) "Good or valuable consideration given": see CONTRACT; GOOD. See also *Stackemann v. Paton* [1906] 1 Ch. 774.

(f) Marriage was not a "valuable consideration in money or money's worth" within Succession Duty Act 1853 (c. 51), s.17 (*Floyer v. Bankes* 33 L.J. Ch. 1). See MONEY'S WORTH; PECUNIARY CONSIDERATION.

(g) A conveyance for a "valuable consideration actually paid" (Charitable Uses Act 1735 (c. 36), s.2) connoted that "the consideration must be paid by the person for whose benefit the conveyance is made" (*Doe d. Preece v. Howells* 2 B. & Ad. 744).

(h) "Valuable consideration" (Finance Act 1910 (10 Edw. 7 and 1 Geo. 5, c. 35), s.74(5)): see *Baker v. Inland Revenue Commissioners* [1924] A.C. 270.

(j) "Valuable and sufficient consideration" (Finance Act 1965 (c. 25), s.52(4)(b), now Income and Corporation Taxes Act 1970 (c. 10), s.248(5)(b)) connoted a payment which was a fair equivalent for the liability incurred by the payer. So payments made by a company to trustees to be used to pay school fees for the children of employees posted abroad, were not made for "valuable and sufficient consideration" within the meaning of the section (*Ball v. National and Grindlay's Bank* [1971] 2 W.L.R. 1129).

(k) "Valuable and sufficient consideration" (Income and Corporation Taxes Act 1970 (c. 10), s.434(1)). Where, under an arm's length arrangement with a charitable company, a taxpayer, in consideration of the payment to him of a capital sum, covenanted to make annual payments to the company over a number of years, the capital sum was held to be "valuable and sufficient consideration" for the annuity within the meaning of this section, notwithstanding that the sole object of the arrangement was to avoid the payment of tax (*I.R.C. v. Plummer* [1979] 3 W.L.R. 689).

See BONA FIDE; GOOD; FURTHER; FULL CONSIDERATION; FRAUDULENT ASSURANCE; FULL VALUABLE CONSIDERATION.

(3) "Valuable business premises." A description, in particulars of sale, as "valuable business premises" of a shop which was subject to a restrictive covenant prohibiting its use for the purpose of any business other than that of a ladies' outfitter, fancy draper and manufacturer of ladies' clothing, was held misleading; a purchaser relying on it was accordingly released from the contract (*Hunt (Charles) Ltd. v. Palmer* [1931] 2 Ch. 287).

(4) "Valuable" property, effect of the phrase in particulars of sale: see *Waddell v. Woolfe* L.R. 9 Q.B. 515.

(5) (a) "Valuable security" (Larceny Act 1861 (c. 96), s.1) "is one on which money is payable irrespective of any contingency" (*per Cockburn C.J., R. v. Tatlock* 2 Q.B.D. 163), and accordingly he, and Kelly C.B., there held that a policy of insurance was not a "valuable security" within s.75; but the converse was held by Amphlett and Bramwell BB. (2 Q.B.D. 166, 169). A certificate for shares in a foreign railway was such a "valuable security" (*R. v. Smith Dears.* 561); but an unstamped cheque, the payment of which for want of the stamp would render the banker liable to a penalty, was not a "valuable security" (*R. v. Yates* 1 Moody, 170). See hereon *R. v. Danger* 7 Cox C.C. 303. As to describing this "valuable security" in an indictment, see *R. v. Lowrie* L.R. 1 C.C.R. 61.

(b) A judgment recovered by a pauper was a "valuable security" within Poor Law Amendment Act 1849 (c. 103), s.16 (*West Ham v. Ovens* L.R. 8 Ex. 37).

(c) It has been stated that a railway ticket is a "valuable security" (Maxwell (2nd ed.), 344, citing *R. v. Boulton* 19 L.J.M.C. 67; *R. v. Beecham* 5 Cox C.C. 181).

See SECURITY; SECURITY FOR MONEY.

(6) "Other valuable things," in a bequest construed *ejusdem generis* (*Cavendish v. Cavendish* 1 Cox Ch. 77); so of "things" (*Stuart v. Bute* 1 Dow, 73). See also CURIOSITY.

Rights or interests "subsisting and valuable": see RIGHTS.

"Valuable THING" deposited on a gaming contract: see DEPOSIT.

VALUABLES. "Valuables" in Innkeepers' Liability Act 1863 (c. 41), s.1, held not to include a fur coat: see *Cryan v. Hotel Rembrandt* 41 T.L.R. 287.

VALUATION. (1) "An arbitration is a proceeding conducted according to judicial rules, and the arbitrator hears the parties and their evidence. A valuation is a proceeding in which a person specially skilled in the subject-matter decides solely by the use of his eyes and his knowledge" (*per Esher M.R., Re Dawdy and Hartcup* 15 Q.B.D. 426).

(2) "As between landlord and tenant, a valuation involves balancing, on one side, the payment due from the tenant for dilapidations, and on the other side, sums from the landlord to the tenant for tenant right and so forth" (*per Tucker L.J., in Oades v. Spafford* [1948] 2 K.B. 74).

(3) The valuation of a life interest brought into hotchpot should be an actuarial valuation of it at the time when it first took effect (*Re Heathcote* [1891] W.N. 10, considered in *Re West* [1921] 1 Ch. 533; followed in *Re Thomson Settlement Trusts* [1953] Ch. 414).

(4) In Valuation (Metropolis) Act 1869 (c. 67), s.45, "valuation list for the time being in force" meant "that, after the time when the valuation list is to come into force according to the preceding section and until the moment when the next valuation list has come into force, the valuation list shall be deemed to have been duly made" (*per Channell J.*), and therefore on an application for a distress warrant for

rate, the justices cannot inquire whether the valuation list, was or was not, duly made (*Westminster v. Army & Navy Auxiliary Supply* [1902] 2 K.B. 133).

(5) "Valuation list in force," in Metropolitan Water Board (Charges) Act 1907 (c. clxxi), s.13(1): see *Metropolitan Water Board v. Phillips* [1913] A.C. 86.

"Valuation, imperfect or erroneous": see IMPERFECT.

See APPRAISEMENT; FAIR VALUATION; PRICE; TRAMWAY.

VALUE. (1) In a covenant to pay rent "either in gold sterling or Bank of England notes to the equivalent value in gold sterling" the word "value" was held to denote nominal value, and not the value of gold coins regarded as a commodity (*Tresidder-Griffin v. Co-operative Insurance Society* [1956] 2 Q.B. 127).

(2) In covenants to settle after-acquired property, "where the property to be settled is to be of a named minimum value, and the interest accruing is reversionary, the sum named means the value of the property itself when it falls into possession, not the value of the reversion at the time of settlement" (Elph. 526, citing *Re Mackenzie* 2 Ch. 345; *Cornmell v. Keith* 3 Ch. D. 767; *Re Clinton* L.R. 13 Eq. 295; and *Re Welstead* 47 L.T. 331). See also ONE TIME.

(3) In Bills of Exchange Act 1882 (c. 61), s.2, " 'value' means valuable consideration," on which see *Nash v. De Freville* [1900] 2 Q.B. 72. "Value received," in a bill of exchange: see *Grant v. Da Costa* 3 M. & S. 351; *Highmore v. Primrose* 5 M. & S. 65; *Priddy v. Henbrey* 1 B. & C. 674; in a promissory note, "value received" means received from the payee (*Clayton v. Gosling* 5 B. & C. 360).

(4) (a) Value of land compulsorily acquired for water works; see *Re Gough and Aspatia, etc., Water Board* [1904] 1 K.B. 417; *Re Bwllfa, etc., Collieries and Pontypridd Waterworks Co.* [1901] 2 K.B. 805; [1903] A.C. 426, cited FULL COMPENSATION and POSSESSION. See also WATERWORKS.

(b) Land *extra commercium* (see EXTRA) taken compulsorily, e.g. the site of a church, is to be valued, not as subject to restraint of user or occupation, but according to its possibility if and when freed from such restraint (*City & South London Railway v. St. Mary Woolnoth* [1903] 2 K.B. 728, affirmed [1905] A.C. 1).

(c) In considering the value of land compulsorily acquired it was held not to be permissible to take into consideration the fact that the use to which the land was to be put would render it valueless (*Colombo Municipal Council v. Chetiar* [1947] L.J.R. 1080).

(5) Value of subjacent minerals, under compulsory powers and when required: see FULL COMPENSATION, and especially *Eden v. North Eastern Railway* [1907] A.C. 400, and *Rugby Portland Cement Co. v. London & North Western Railway* 77 L.J.K.B. 1096.

(6) Value of licensed premises on non-renewal of licence: see *Ex p. Ashby's Cobham Brewery Co.* [1906] 2 K.B. 754, cited RENEWAL.

(7) *Semble*, as of general acceptance, the "value" of the effects of an outgoing tenant, which he has to leave on the farm for the incoming tenant, is their market value, i.e. the price which a buyer, bound to nothing beyond payment, would be willing to give (*Crabb v. Crombie* 9 Macph. 54).

(8) The "value" of a parcel of gold is not sufficiently declared within Merchant Shipping Act 1854 (c. 104), s.503 (see Merchant Shipping Act 1894 (c. 60), s.502), by declaring it as so much "gold dust" (*Williams v. African S.S. Co.* 1 H. & N. 300).

(9) The "value" of a security, in a proof of debt, means "a positive value; a sum upon payment of which the trustee can redeem the security" (*per Collins L.J., Re Piers*, cited INADVERTENCE).

(10) "Value" of a ship (Merchant Shipping Act 1854 (c. 104), s.504) meant what

she would have fetched if sold immediately before the collision, without deducting costs of sale (*Leycester v. Logan* 6 W.R. 849; see hereon *Grainger v. Martin* 2 B. & S. 456). This limitation of a shipowner's liability is now regulated by the ship's tonnage (Merchant Shipping Act 1894 (c. 60), s.503; see *Cooper v. M'Kenzie* 43 Sc. L.R. 416).

(11) (a) The "value" of a succession for the purpose of charging duty thereon under Succession Duty Act 1853 (c. 51), s.10, had to be made by capitalising its "annual value" (s.21, *ibid.*). This annual value "must be determined, once for all, when the succession falls, and cannot be left for future ascertainment" (*per* Lord Chelmsford, *A.-G. v. Sefton* 34 L.J. Ex. 106), and it meant the present annual value regardless of a (possible or probable, remote or near) prospective increase or decrease (*A.-G. v. Sefton* 34 L.J. Ex. 98; 11 H.L. Ca. 257). But where property, *e.g.* unoccupied land, was not in its existing state yielding or capable of yielding any annual income, but yet was saleable, such property would (probably) have been chargeable with succession duty; and its annual value would (probably) have been a value equal to interest at £3 per cent, on the sum that might be realised if the property was at once sold (*per* Westbury C., and Lord Chelmsford, *ibid.*; but Lord Wensleydale thought it unnecessary for that case to give any opinion on the point).

(b) The value for estate duty purposes of shares in a private company whose articles contain restrictions on transfer, including provisions for pre-emption by the other shareholders, is the price which the shares would fetch if sold in the open market on the footing that the purchaser is to be placed on the register and hold the shares subject to the articles. It is not merely the price obtainable on the footing that the purchaser is to stand in all respects in the place of the deceased and be obliged, before being registered himself, to offer the shares to the other shareholders (*Inland Revenue Commissioners v. Crossman* [1937] A.C. 26).

(c) In ascertaining the value of a particular asset of an estate for the purpose of determining the incidence of debts and funeral and testamentary expenses on that and other assets "rateably according to value" (Administration of Estates Act 1925 (c. 23), Sched. I, Pt. II, para. 6), incumbrances are deductible from the gross value, but legacies payable out of the asset are not (*Re John* [1933] Ch. 370). See also PRO-BATE.

(12) "Value of the undertaking" (Finance Act 1927 (c. 10), s.55(1)(A)(i)) meant the gross and not the net value (*Gomme (E.) v. Commissioners of Inland Revenue* [1964] 1 W.L.R. 1348).

(13) "Increased value," in Finance Act 1910 (c. 35), s.44(2): see *Inland Revenue Commissioners v. Truman, Hanbury, Buxton & Co.* [1913] A.C. 650.

(14) "Value of the property conveyed or transferred in Finance Act 1910 (c. 35), s.74; see *Westmorland (Earl of) v. Inland Revenue Commissioners* [1921] 1 K.B. 703; overruled by *Stanyforth v. Inland Revenue Commissioners* [1930] A.C. 339.

(15) "Value" (Finance Act 1965 (c. 25), Sched. 6, para. 4(1)(a)) means market value, so that where the cost of the acquisition of certain assets was satisfied by the issue of new shares in the acquiring company, the acquisition "value" was the middle market price when the shares were first quoted on the Stock Exchange, and not the price at which they were nominally issued (*Stanton v. Drayton Commercial Investment Co.* [1980] 3 A11 E.R. 221).

(16) Jurisdiction to the county court where "value of the tenements" did not "exceed £20 by the year" (County Courts Act 1867 (c. 142), s.11) meant the actual marketable value, of which the lettable rent is a fair criterion (*Elstone v. Rose* L.R. 4 Q.B. 4; see also *Stolworthy v. Powell* 55 L.J.Q.B. 228, and *Bassano v. Bradley* [1896] 1 Q.B. 645, cited ANNUAL VALUE), Cp. QUESTION.

(17) "Value of the property" (County Courts Act 1888 (c. 43), s.67(4)—see County Courts Act 1934 (c. 53), s.52(1)(d)) means the value of the property in relation to which litigation is existing, and not the value of the rights in such property which are the subject of such litigation: see *Angel v. Jay* [1911] 1 K.B. 666. Cp. PURCHASE MONEY.

(18) "The fair market value" of a tied house, compulsorily taken—e.g. under Housing of the Working Classes Act 1890 (c. 70), s.21(1)(a)—had to include the value of the covenant by which the trade of the premises was "tied" (*Re Chandler's Brewery Co. and London County Council* [1903] 1 K.B. 569); and so, generally, where "tied" property was compulsorily acquired under Lands Clauses Consolidation Act 1845 (c. 18) (*Bourne v. Liverpool* 33 L.J.Q.B. 15). See also *Vyricherla Naranaya Gajapatiraju v. Revenue Divisional Officer, Vizagapatam* [1939] A.C. 302.

(19) In Poaching Prevention Act 1862 (c. 114), s.2, the "value" of game to be restored to an innocent person from whom it has been seized by a police officer purporting to act under the section, is the value at the time when it ought to be restored to the person from whom it was seized, (e.g. on the termination in his favour of proceedings taken against him), and not its value at the time of the seizure: see *Stowe v. Benstead* [1909] 2 K.B. 415.

(20) "Monopoly value" as defined by Licensing (Consolidation) Act 1910 (c. 24), s.14, had to be a definite capital sum to be ascertained once for all: see *R. v. Customs and Excise Commissioners* [1914] 2 K.B. 390, cited MONOPOLY.

(21) "Value of the house" (Housing Act 1936 (c. 51), s.9(3): these words pointed to an objective standard and not the value to a particular person. It was the freeholder's point of view and not the general lessee's that was to be considered (*Bacon v. Grimsby Corporation* [1950] 1 K.B. 272).

(22) "Full net annual value" (Housing Act 1936 (sup.), s.9(4)): the limitations placed upon the amount recoverable by a landlord had to be considered in deciding what was the annual value (*Rawlance v. Croydon Corporation* [1952] 2 Q.B. 803).

(23) The "value" of a house to which regard must be had by the local authority under s.39(1) of the Housing Act 1957 (c. 56), when considering whether notices should be served under ss.9(1A) and 11(1)(3) requiring the landlord to render it properly fit for habitation, is its open market value (*Inworth Property Co. v. Southwark London Borough Council* (1977) 34 P. & C.R. 186), and in assessing this the potential value with vacant possession may be considered (*Hillbank Properties v. Hackney London Borough Council* [1978] Q.B. 998; *Dudlow Estates v. Sefton Metropolitan Borough Council* (1979) 249 E.G. 1271).

(24) "Wholesale value of any goods" (Finance (No. 2) Act 1940 (c. 48), s.21(1)) is the "open market value" at the time of delivery to the buyer having due regard to every element of value at such time, including an increase in value attributable to copyright protection (*J. & C. Moores v. Customs and Excise Commissioners* [1963] 1 All E.R. 582).

Value of tramway, etc.: see TRAMWAY.

"Assignee for value": see ASSIGNEE.

Stat. Def., Social Security and Housing Benefits Act 1982 (c. 24), s.29.

See ANNUAL VALUE; CLEAR; FULL VALUE; FREE LAND; GROSS; INVOICE VALUE; MARKET VALUE; NET; PRICE; PRINCIPAL VALUE; PURCHASE FOR VALUE; SHIPPING VALUE; SIMILAR; WORTH; DAMAGED VALUE; FAIR MARKET VALUE; FAIR VALUE; FREE YEARLY.

VALUE ADDED TAX. See Finance Act 1972 (c. 41), Part 1.

VALUE OF THE SHIP AND FREIGHT. “Whatever is on board a ship for the object of the voyage and adventure on which she is engaged, belonging to the owners, constitutes a part of the ship and her appurtenances, within the meaning of Hackney Carriages Act 1815 (c. 159), s.1, whether the object be warfare, the conveyance of passengers or goods, or the fishery” (*per* Abbott C.J., *Gale v. Laurie* 5 B. & C. 164; see also *Wilson v. Dickson* 2 B. & Ald. 2; *Cannan v. Meaburn* 1 Bing. 465; *Smith v. Kirby* 1 Q.B.D. 131).

See FREIGHT; VALUE.

VALUED. (1) Valued policy: “In a valued policy what is valued is the subject-matter of the insurance, and not the amount of the loss. This, I think, is made clear by the Marine Insurance Act 1906 (c. 41), s.27(2) and (3)” (*per* Atkin L.J., in *City Tailors Ltd. v. Evans* 91 L.J.K.B. 379; [1922] W.C. & Ins. Rep. 58). See POLICY. Cp. UNVALUED.

(2) Teinds “valued”: see *Speir v. Willoughby de Eresby* 28 Sc. L.R. 277.

(3) “Valued in the usual way”: see *Hordern v. Hordern* 80 L.J.P.C. 15.

See HEREAFTER VALUED AND DECLARED.

VAPOUR. For the conventional chemical distinction between “vapour” and “gas,” see *Stanley v. Western Insurance* 37 L.J. Ex. 74. See hereon *Hoare v. Ritchie* [1901] 1 K.B. 434.

VARECTUM. See WARECTUM.

VARIANCE. (1) “Variance” signifies an alteration or change of condition after a thing done. It is also used for an alteration of something formerly laid in a plea” (Cowel). Cp. ALTERATION; DEPARTURE.

(2) (Summary Jurisdiction Act 1848 (c. 43), s.1); “the word ‘variance’ points at some difference between the allegation in the summons or information, and the evidence adduced in support of it” (*per* Crompton J., *Martin v. Pridgeon* 28 L.J.M.C. 179); accordingly, it was there held that when the evidence showed a different offence than that alleged in the summons, the justices could not convict; such a difference was not a “variance” (see also *Loadman v. Cragg* 26 J.P. 743). A “variance” would be, *e.g.* a misdescription, not misleading, of an employer (*Whittle v. Frankland* 26 J.P. 372), or of an ownership (*Ralph v. Hurrell* 44 L.J.M.C. 145), or of a date (*Exeter v. Heaman* 37 L.T. 535). It is clear that the word “variance” may include matters of greater importance than a defect in form: see *per* Alverstone C.J., in *R. v. Garrett-Pegge* 80 L.J.K.B. 614. See also *Rodgers v. Richards* [1892] 1 Q.B. 555, cited SUBSTANCE.

(3) “At variance” (Judicature Act 1873 (c. 66), s.25(9)—see Judicature Act 1925 (c. 49), s.44): see *The Bernina* 11 P.D. 33.

VARIATION. (1) Variation of “property settled” (Matrimonial Causes Act 1859 (c. 61), s.5—see Matrimonial Causes Act 1965 (c. 72), s.17(1)(b)): see PROPERTY.

(2) As to the variation of a tenancy by withdrawing from the letting the use of furniture, see *Seabrook v. Mervyn* [1947] 1 All E.R. 295; *Stagg v. Brickett* [1951] 1 K.B. 648.

(3) “Variation, modification or development.” A pursuer is entitled to justify a verdict although the evidence shows a “variation, modification or development” of the facts averred in the closed record (*Cleisham v. British Transport Commission* (H.L.) 1964 S.L.T. 41).

See VARY; VARIED.

VARIED. (1) A contract is not varied by forbearance: see *Levy & Co. v. Goldberg* [1922] 1 K.B. 688.

(2) "Varied," in Criminal Justice Administration Act 1914 (c. 58), s.34, which dealt with fixing and varying salaries of clerks to justices: see *R. v. Home Secretary, Ex p. Essex Standing Joint Committee* 91 L.J.K.B. 579.

(3) (Companies Act 1929 (c. 23), Sched. I, Table A, para. 3; see Companies Act 1985 (c. 6), s.127). Rights attached to a class of shares of a company are not "varied" merely by being affected by changes in other classes of shares (*Greenhalgh v. Arderne Cinemas* [1945] 2 A11 E.R. 719). An increase in capital does not affect, modify or vary the rights of other shareholders so as to make their consent by extraordinary resolution necessary (*White v. Bristol Aeroplane Co.* [1953] Ch. 65; *Re John Smith's Tadcaster Brewery Co.* [1953] Ch. 308).

(4) (a) (Finance Act 1941 (c. 30), s.25(1)—see Income and Corporation Taxes Act 1970 (c. 10), s.422). Where a provision for the payment of a stated sum free of income tax made before September 3, 1939, was confirmed after that date by deed (*Dudley v. Dudley* [1944] K.B. 264, and see *Re Sebag-Montefiore* [1944] Ch. 331), the provision was not "varied" but was subject to the section. Where a codicil increased a tax-free annuity given by the will the original amount was treated as not "varied," and therefore subject to the section, but the additional amount was treated as the subject of a separate provision, not subject to the section (*Re Sebag-Montefiore* sup.). It is now clear (*Berkeley v. Berkeley* [1946] A.C. 555) that the provision in such a case is not "made" until the death of the testator.

(b) An agreement for a temporary reduction in the amount of an annuity was held not to "vary" it for the purposes of this section (*Re Cobbold's Separation Deed* 111 L.J. Ch. 276).

(5) "Varied . . . within . . . 28 days" (Courts Act 1971 (s.23), s.11(2)). Where a judge in altering a bankruptcy order exercised his inherent jurisdiction to remedy a mistake he had not "varied" the order within the meaning of s.11(2) (*R. v. Saville* [1980] 1 A11 E.R. 861).

See EXPRESSLY VARIED.

VARIETY. See ENTERTAINMENT.

VARY. (1) The power to "vary" investments given by the concluding words of Trust Investment Act 1889 (c. 32), s.3 (see Trustee Act 1925 (c. 19), s.1(1)(r)), extends to all investments whether made under the Act or not (*Hume v. Lopes* [1892] A.C. 112, cited TRUST FUNDS).

(2) When "securities" is used in the sense of authorising purchases, e.g. of ground rents (see INVEST), then a power to "vary and transfer" securities, authorises their sale (*Re Tapp and London & India Docks Co.* 74 L.J. Ch. 523; Trustee Act 1925, s.1).

(3) "Any arrangement . . . varying . . . the trusts" (Variation of Trusts Act 1958 (c. 53), s.1(1)). An arrangement where the new trusts, although differing from the old, retained the substratum of the old trusts, could properly be described as "varying" the old trusts and could thus be approved by the court (*Re Ball's Settlement Trusts, Ball v. Ball* [1968] 1 W.L.R. 899). An arrangement which, when approved, revokes all prior trusts and establishes new trusts is nevertheless an "arrangement varying the trusts" within the meaning of this section. It is the arrangement which

varies the trusts; not the order of the court itself (*Re Holt's Settlement, Wilson v. Holt* [1969] Ch. 100).

(4) "Vary or rescind" (Increase of Rent and Mortgage Interest (Restrictions) Rules 1920 (No. 1261), r. 7): see *Butler v. Hudson* [1953] 2 Q.B. 407).

(5) "To . . . vary" (Matrimonial Causes Act 1950, s.28(1), Matrimonial Causes Act 1965 (c. 72), Sched. 1, para. 9) does not include the refund of past payments to a divorced wife (*Young v. Young (No. 2)* [1962] P. 218). See also PROPERTY; SETTLEMENT.

"Rate of interest varying with profits": see RATE.

VASSAL. In feudal times, the grantor of lands "was called the proprietor, or lord; being he who retained the dominion or ultimate property of the feud or fee; and the grantee, who had only the use and possession according to the terms of the grant, was stiled the feudatory or vasal, which was only another name for the tenant or holder of the lands" (2 Bl. Com. 53). See VILLEIN.

VEGETARIAN. A legacy "in furtherance of the principles of food reform as advocated by the Vegetarian Societies of Manchester and London" is a good charity (*Re Slatter* 21 T.L.R. 295, following *Re Cranston* [1898] 1 Ir. R. 431; but see *Re Hummeltenberg* 92 L.J. Ch. 326).

VEHICLE. (1) Generally, "vehicle" is synonymous with carriage; it includes a bicycle (*Ellis v. Nott-Bower* 13 T.L.R. 35). See also COACH.

(2) In the exception from license duty given by Revenue Act 1869 (c. 14), s.19(6), for a trade "waggon, cart, or other vehicle," the word "vehicle" meant such a cart as that which a tradesman used for sending his goods from place to place (*Speak v. Powell* L.R. 9 Ex. 25, cited TRADE). See CARRIAGE.

(3) Where a notice was served under s.47(5) of the Town and Country Planning Act 1962 (c. 38) requiring the discontinuation of the use of land for stationing "vehicles," it was held that the line between steps causing what was once a vehicle to cease being a vehicle was sensibly drawn somewhere between the removal of the wheels and the removal of the chassis (*Backer v. Uckfield R.D.C.* (1970) 68 L.G.R. 596).

(4) Name and address of a seller of milk in a highway, to be on the "vehicle" or "can" (Milk and Dairies, etc., Act 1915 (c. 66), s.6): see *Crabtree v. Skelton* 70 L.J.K.B. 560.

(5) "Vehicle" in an accident insurance policy includes a bicycle: see *Hainsford v. London Express Newspapers Ltd.* 44 T.L.R. 349; see also *Harper v. Associated Newspapers Ltd.* 43 T.L.R. 331.

(6) "Vehicle constructed or adapted for use solely for conveyance of goods" (Customs and Inland Revenue Act 1888 (c. 8) s.4): see *French v. Champkin* [1920] 1 K.B. 76.

(7) In *Dennis v. Leonard* 141 L.T. 94, the majority of the court expressed the opinion that a petrol-driven tractor was a vehicle within the meaning of Motor Cars (Use and Construction) Order 1904.

(8) "Vehicle" (Motor Vehicles (Authorisation of Special Types) General Order 1955, art. 18(1)) did not include vehicles or a combination of vehicles, so that two tractors moving the same load formed more than one vehicle (*Dixon v. B.R.S. (Pickfords)* [1959] 1 W.L.R. 301).

(9) "Farmer's goods vehicle" (Road Traffic Act 1960 (c. 16), Sched. 13, para. 1, Vehicles (Excise) Act 1971 (c. 10), Sched. 4) includes a vehicle used for the car-

riage of hatching eggs in connection with the business of chick breeding (*J. M. Knowles Ltd. v. Rand* [1962] 1 W.L.R. 893).

(10) “Vehicle” (Industrial Development Act 1966 (c. 34), s.13). A trailer assembly with rear wheels only, and immovable until a tractor unit has been inserted under its front portion, is nevertheless a “vehicle” within the meaning of this section (*British Oxygen Co. v. Board of Trade* [1969] 2 Ch. 174).

(11) A movable confectionery stall with tyred wheels, which was positioned in a street during the day and wheeled away at night, is a “vehicle” within the meaning of s.31 of the Road Traffic Regulation Act 1967 (c. 76) and regulations made under it by a local authority (*Boxer v. Snelling* [1972] Crim. L.R. 441).

(12) “Vehicle . . . parts and accessories” (Motor Vehicles (Construction and Use) Regulations 1973 (No. 24), reg. 90(1)). A container which is “part” of a vehicle when secured does not cease to be merely because it cannot be secured due to its defective condition (*Bindley v. Willett* [1981] R.T.R. 19).

Stat. Def., Road Traffic Act 1972 (c. 20), s.68(8); Carriage of Passengers by Road Act 1974 (c. 35), Sched., para. 2; Customs and Excise Management Act 1979 (c. 2), s.1; Road Traffic Regulation Act 1984 (c. 27), s.99(5).

See CART; MECHANICAL; MOTOR.

VENARY. “Beasts of chase, or venary” (2 Bl. Com. 415): see BEASTS.

VEND. (1) “I think the proper meaning to be attached to the word ‘vend’ is the habit of selling” (*per* Coleridge J., *Minter v. Williams* 5 L.J.K.B. 60, 62, on which see *per* Alverstone C.J., and Williams L.J., *British Motor Syndicate v. Taylor* [1900] 1 Ch. 583, cited USE).

(2) “In order that a sale may be an infringement of a patent, some material part of the transaction of sale must be done in England” (*per* Stirling J., *British Motor Syndicate v. Taylor* *sup.*, citing *Badische Anilin und Soda Fabrik v. Basle Works* [1898] A.C. 208, cited USE). See also *Badische Anilin und Soda Fabrik v. Hickson* [1905] 2 Ch. 495; affirmed House of Lords [1906] A.C. 419, cited EXERCISE, especially *per* Lord Davey.

(3) An indispensable ingredient of vending is selling or offering for sale, and a coin change machine is not a “vending” machine (*R. v. Maloney* (1971) 13 Cr. L.Q. 368).

See SALE; SELL.

VENDOR. (1) In a contract of sale for “the vendor,” the vendor is not sufficiently described: see PROPRIETOR. See also *Huddlestons’ Estates* [1921] 1 Ir. R. at p. 48.

(2) Prima facie, “lessor or lessee” is not included in “vendor or purchaser”; but as that latter phrase was used at the commencement of Vendor and Purchaser Act 1874 (c. 78), s.9, it included lessor or lessee, because of the relation of the section to s.2, the first rule of which applied to leases (*Re Stephenson and Cox* 36 S.J. 287; see hereon *Re Anderton and Milner* 45 Ch. D. 476; *Jones v. Watts* 43 Ch. D. 574, cited SALE).

(3) “Vendor of registered land,” in Land Transfer Act 1897 (c. 65), s.16(2): see *Re Voss and Saunders* 80 L.J. Ch. 33. Cp. Land Registration Act 1925 (c. 21), s.110(5).

Stat. Def., Companies Act 1948 (c. 38), Sched. 3, para. 3; Sched. 4, para. 24; Finance Act 1982 (c. 39), s.53; Housing Defects Act 1984 (c. 50), Sched. 2, para. 7.

See LIEN, para. (21).

VENIAL. “*De peche est briefe division, car est mortal ou venial solonque ceo que appiert es paines.* And that crime is called mortall or corporall; mortall because it deserveth death, and such crimes are called veniall as may be redeemed or satisfied by some other punishment than by death” (Co. Litt. 287 b).

See CRIME. Cp. TRIFLING.

VENIRE DE NOVO. (1) As to when this will be granted, see *Crane v. Director of Public Prosecutions* [1921] 2 A.C. 299; *R. v. Dennis* [1924] 1 K.B. 867.

(2) Means an order on the appellant to attend and take his trial again in respect of the charge that lies against him, to plead to the indictment and be tried duly according to law (*R. v. Olivo* [1942] 2 A11 E.R. 494).

VENT. In a restrictive covenant or condition against the erection of buildings “with fireplaces or vents,” the ordinary meaning of “vents” is chimneys; the word does not include ventilators (*Johnston v. Sawers-Mitchell* 30 Sc. L.R. 518).

VENTILATION. (1) “Ventilation,” in clause 13, Privy Council Order 1885, made under Contagious Diseases (Animals) Act 1878 (c. 74), s.34(11), included air-space; therefore, a local authority regulation defining the air-space for each cow in a cowshed was valid (*Baker v. Williams* [1898] 1 Q.B. 23).

(2) Ventilation of factories and workshops: see Factories Act 1961 (c. 34), s.4.

See ADEQUATE.

VENTRE. Child *en ventre*: see LIVING; BORN.

VENUE. “‘Venew’ or ‘visne’ is a terme used in the statute of 35 Hen. 8, c. 6, and often in our bookes, and signifies a place next to that where any thing that comes to be tryed is supposed to be done. And therefore for the better discovery of the truth of the matter in fact upon every tryall, some of the jury must be of the same hundred, or sometimes of the same parish in which the thing is supposed to be done, who by intendment may have the best knowledge of the matter. See Coke, 6 Book, 14 a, *Arundel’s Case*” (Termes de la Ley). The last sentence is curious as throwing light on the original function of the jury; but the venue is now often changed to the locality in which the matter has arisen, not because the jury may have “the best knowledge” of it, but because each locality should bear its own burdens and because the locality of the subject-matter is the place where the witnesses frequently reside.

VERBAL. A nod of assent to an oral question constitutes a verbal statement, though it may not have been an oral statement (*Chandarasekera (alias Alisandiri) v. R.* [1937] A.C. 220).

Verbal directions or wishes by a testator: see WISH; cp. SECRET TRUST.

See PAROL.

VERDEROR. “‘Verderor, *Vindarius*,’ is a judicial officer of the Kings forest . . . sworn to maintain and keep the assizes of the forest, and to view receive and enrol the attachments and presentments of all manner of trespasses of vert and venison in the forest, Manwood” (Cowel; see also Termes de la Ley; 3 Bl. Com. 71).

VERDICT. (1) “‘Verdict of 12 men.’ *Veredictum quasi dictum veritatis*, as *judicium est quasi juris dictum. Et sicut ad questionem juris, non respondent juratores sed*

judices: sic ad questionem facti non respondent judices sed juratores. For jurors are to try the fact, and the judges ought to judge according to the law that riseth upon the fact, for *ex facto jus oritur*" (Co. Litt. 226 a, b). See JURY.

(2) A verdict is (1) general, or (2) special; general, when in criminal cases the jury say "guilty" or "not guilty," or when in civil cases they find generally for the plaintiff or for the defendant; special, when the jury find specific facts (as distinguished from the evidence proving such facts), the court entering the judgment according to law on the facts as so found. See hereon Cowel; Jacob; 3 Bl. Com. 377, 378; 4 *ibid.* 360, 361.

(3) As to whether "verdict," in County Courts Act 1850 (c. 61), s.12, was limited to a verdict upon an issue joined, see *Reed v. Shrubsole* 18 L.J.C.P. 225; *Prew v. Squire* 10 C.B. 912, cited DEFAULT.

(4) Where an agreement for arbitration of matters involving several items of claim says that the award shall be for a sum certain for the claimant, or that it shall be for the respondent, and that it shall be entered as a verdict, and that the costs shall "follow the verdict"; if the award be for the claimant he is entitled to the whole costs although the sum awarded to him be but little more than one fourth of his claim; and the arbitrator cannot be questioned as to which items of claim he allowed and which he disallowed (*O'Rourke v. Commissioner for Railways* 15 App. Ca. 371). See EVENT; CONFORMITY.

VERGE. "Verge" (Motorways Traffic Regulations 1959 (No. 1147), reg. 3(1)(h)). The hard shoulder of a motorway is part of the verge and not of the "marginal strip" (reg. 3(1)(a)(d)), or of the carriageway (reg. 7) (*Wallwork v. Rowland* [1972] R.T.R. 86).

Stat. Def., Severn Bridge Tolls Act 1965 (c. 24), s.22.

See CARRIAGEWAY.

VERGER. " 'Vergers, Vigatores,' are such as carry white wands before the justices of either bench, *Fleta*, lib. 2, c. 38. Otherwise called *Portatores Virgæ*" (Cowel).

VERMIN. Rabbits are vermin in Australia (Vermin Destruction (Victoria) Act 1890, on which see *King v. Cheyne* [1900] A.C. 622, cited SPECIAL); *secus*, as "vermin" is used in Gun Licence Act 1870 (c. 57), s.7(4) (*Lord Advocate v. Young* [1899] W.N. 190, disapproving *Gosling v. Brown* 5 Rettie, 755). See GAME.

Stat. Def., Public Health Act 1936 (c. 49), s.90(1); Public Health (London) Act 1936 (c. 50), s.304; Forestry Act 1967 (c. 10), s.7(5)(b).

VERT. "Whatsoever beareth green leaf, but specially of great and thick coverts" (4 Inst. 317, which see for the different kinds of vert; see also *Termes de la Ley*; Cowel).

VERTICAL. "Vertical deviation": see LATERAL.

VERTU. A bequest of "objects of vertu and taste" (or "vertu or taste") will not, *proprio vigore*, comprise pictures; especially when those words follow an enumeration such as gold and silver plate, china, etc., and where, in the same will there is another gift of "furniture," a word under which pictures are aptly included (*Re Londeshorough* 50 L.J. Ch. 9). A chain of office is an "article of vertu" (*Re Coxen, McCallum v. Coxen* [1948] Ch. 747). See also ARTICLE, para. (10).

VERVACTUM. See WARECTUM.

VESEY-FITZGERALD'S ACT. See FITZGERALD.

VESSEL. (1) "Vessel" does not include everything that floats, *e.g.* it does not include a raft or a wherry (*Gapp v. Bond* 19 Q.B.D. 200); nor within the meaning of the old R.S.C., Ord. 19, r. 3, did it include a floating landing stage permanently fixed to the riverside but capable of rising and falling with the tide: see *The Craig-hall* [1910] P. 207. But, in a marine insurance against collision, the word may include an anchor to which a vessel is fast, for the anchor is a portion of the vessel to which it belongs (*Re Margetts and Ocean Accident Guarantee Corporation* [1901] 2 K.B. 792).

(2) An open boat 18 feet long; held, within an Act, making it penal to set on fire a "ship or vessel" (*R. v. Bowyer* 4 C. & P. 559).

(3) In Swansea Harbour Acts 1854 (c. cxxvi), 1874 (c. civ), "vessel" "bound from or to any port or place in the United Kingdom," included a barge (*Tennant v. Swansea Harbour Trustees* 3 T.L.R. 128).

(4) A dumb barge was a "vessel" within the exception in Bills of Sale Act 1878 (c. 31), s.4, and its assignment did not require registration as a bill of sale (*Gapp v. Bond* *sup.*). A dumb barge usually propelled by oars was still a "vessel propelled by oars" within Admiralty Court Act 1861 (c. 10), s.2, when she was in tow (*The Champion* [1934] P. 1).

(5) "Lighter, vessel, barge, or other craft": see *Blandford v. Morrison* 15 Q.B.D. 724, cited CRAFT.

(6) In Merchant Shipping Act 1894 (c. 60), s.742, " 'vessel' includes any ship or boat, or any other description of vessel, used in navigation"; *e.g.* a motor boat carrying more than 12 passengers along a river and canal (*Weeks v. Ross* [1913] 2 K.B. 229). See also *The Mudlark* [1911] P. 116; *The Harlow* [1922] P. 175. It does not include any vessel propelled by oars (*Edwards v. Quickenden and Forester* [1939] P. 261).

(7) In Harbours, Docks and Piers Clauses Act 1847 (c. 27), s.3, "vessel" includes "ship, boat, lighter, and craft of every kind, and whether navigated by steam or otherwise." That definition, uncontrolled, included a barge propelled by oars only; *secus*, when it was qualified as it was in London & St. Katherine's Docks Company Act 1864 (c. clxxviii), ss.100, 101 (*Hedges v. London Docks Co.* 16 Q.B.D. 597).

(8) "Any ship or vessel": see *per* Lord Traynor, *Great Britain S.S. Association v. White* 29 Sc. L.R. 104.

(9) "Vessel or property to which the clause relates" (County Courts Admiralty Jurisdiction Act 1868 (c. 71), s.21(1)) meant the plaintiff's vessel or property (*The County of Durham* [1891] P. 1); and so, in some cases, of "the owner of the vessel or property to which the cause relates" in subs. (2) of the same section (*Pugsley v. Ropkins* [1892] 2 Q.B. 184). But in a collision case, the latter phrase meant the defendant (*The City of Agra* [1898] P. 198; see AGENT).

(10) "Vessel not under command," in Regulations for Preventing Collisions at Sea 1897, Arts. 4 and 21: see *Mendip Range v. Radcliffe*; *H.M.S. Drake* 90 L.J.P. 209.

(11) "Vessel exclusively engaged in local navigation" in Hague Conventions VI, Arts. 1 and 2, and XI, Art. 3: see *H.M. Procurator in Egypt v. Deutches Kohlen Depot* [1919] A.C. 291, cited MERCHANT SHIPS.

(12) "Vessel or ship," within the rules of an indemnity association, held not to include a pontoon with a crane fixed on it: see *Merchants' Marine Insurance Co. Ltd. v. North of England Protecting and Indemnity Association* 43 T.L.R. 107.

(13) "Vessel" (Employment Protection (Consolidation) Act 1978 (c. 44),

s.144(2) cannot be construed as including the plural (*Goodeve v. Gilson's* [1985] I.C.R. 401).

Stat. Def., Merchant Shipping Act 1894 (c. 60), s.742; Customs and Excise Management Act 1979 (c. 2), s.1; Local Government (Miscellaneous Provisions) Act 1982 (c. 30), Sched. 3, para. 5.

“Corked and sealed” vessel: see SEALED.

See CHARGE OR CONDUCT; FISHERMAN; SAILING VESSEL; SHIP; SHIPS AND VESSELS; STEAM VESSEL; STEAMSHIP; COASTING VESSEL.

VEST; VESTED. (1) In the language of conveyancers, “the word ‘to vest’ has several senses which it is important to distinguish—

“(a) Originally the word had reference only to real estate. As applied to estates in land, ‘to vest’ signifies the acquisition of a portion of the actual ownership or feudal possession of the land; the acquisition, not of an estate in possession, but of an actual estate. The fee simple being supposed to be carved out into parts or divisions by the creation of particular estates, a grant to any person of one of these portions of the fee vested him with, or vested in him, an estate in the land. Thus ‘vested’ is nearly equivalent to ‘possessed.’

“In this, its original sense, ‘vested’ has no reference to the absence of conditionalness or contingency. If an estate tail be limited to A, with remainder to B, the estate is a ‘vested’ remainder, not because the failure of issue of A is considered an event certain at some time or other to happen, but because such a remainder vests in B an actual portion of the fee, though the time of its falling into possession is wholly contingent and uncertain. B is invested with a portion of the ownership of the land.

“All remainders, not vested, are in fact contingent, not as being necessarily limited on an uncertain event, but because their taking effect depends on the contingency of their happening to vest during the continuance of the particular estate which supports them, and which may determine at any moment. Thus ‘vested’ comes to mean the opposite of ‘contingent’ or conditional. But the word itself refers, as has been said, not to contingency but to possession.

“(b) The only definition that can be given of the word ‘vested’ in English law, as applied to future interests other than remainders, is that it means ‘not subject to a condition precedent’; what amounts to a condition precedent the cases only can determine. As applied to remainders in land, the word retains its original sense denoting the actual possession of an estate in the land” (Hawk. (1st ed.) 221–223; see further *ibid.*, ch. 18). As to when devises or bequests are vested or contingent, see *Re Coppard* 35 Ch. D. 350; 1 Jarm. (8th ed.) ch. 39; Wms. Exs. (13th ed.) 657 *et seq.* See VESTURE.

(2) Property which shall “come to or vest in” A, *e.g.* as used in a covenant to settle after acquired property, does not, under the word “vest,” connote that the vesting must be indefeasible; property which has become vested in A, though liable to be, but not actually, divested by the exercise of a power of appointment, is included in the covenant (*Re Ware* 45 Ch. D. 269). “Vest,” in such a connection, is used “in its strict legal sense, which means vest in interest and not in possession” (*per Stirling J.*, *Re Ware* 45 Ch. D. 269). See *Re Jackson* 13 Ch. D. 189.

(3) In testamentary gifts referring to death contingently, “the proper legal meaning of the word ‘vested’ is vested in point of interest (*Richardson v. Power* 19 C.B.N.S. 780; see also *Hale v. Hale* 3 Ch. D. 646); but its natural and etymological meaning is said to be vested in possession (*Richardson v. Robertson* 6 L.T. 77; applied in *Re Macfarlane* 43 Sc. L.R. 494); and there are many cases of gifts over on

the death of the legatee before his legacy has become 'vested,' where, upon the context, the word has been held to bear the latter sense" (2 Jarm. (8th ed.) 1343, 1344; 3 *ibid.* 2041, which see for cases in illustration; see also *Simpson v. Peach* L.R. 16 Eq. 208; *Re Cappard* 35 Ch. D. 350, cited VEST). Cp. PRESUMPTIVE.

(4) "'Vest,' in the absence of a context, is usually taken to mean vest in interest rather than vest in possession" (*per* Romer J., in *Re Lord's Settlement* [1948] L.J.R. 207). See also *Marks v. Trustees Executors & Agency Co.* 22 A.L.J. 539. Where the trustees of a will were authorised to raise a part of the "then expectant contingent presumptive or vested share portion or legacy of any person," and to apply the same for his benefit, the word "vested" meant vested in interest, not vested in possession (*Re Wills' Will Trusts* [1959] Ch. 1).

(5) As to force of declaring, in limitations of realty, that no devisee shall have a "vested interest" until a stated age, and that it indicates an executory devise, and not a contingent remainder, see *Re Wrightson* [1904] 2 Ch. 95; Law of Property Act 1925 (c. 20), s.4, and Sched. 1.

(6) As to when "vested," in a bequest, may be read as "payable" or "indefeasible": see *Armytage v. Wilkinson* 3 App. Ca. 355; *Re Edmonson* L.R. 5 Eq. 389; *Poole v. Bott* 1 W.R. 276; *Taylor v. Frobisher* 21 L.J. Ch. 605; *Darley v. Perceval* [1900] 1 I.R. 135; *Creeth v. Wilson* 9 L.R. Ir. 216; RECEIVABLE; RECEIVED; 2 Jarm. (8th ed.) 1343, and 3 *ibid.* 2041. In *Re Norton* [1949] L.J.R. 568, a gift to an infant had not "vested" because "vested" meant "indefeasibly vested."

(7) "To 'vest,' generally means to give the property in" (*per* Brett L.J., *Coverdale v. Charlton* 48 L.J.Q.B. 132). "It may be useful to refer to the history of the word 'vest,' as it is a word which has acquired a definite meaning, carrying with it definite legal consequences. The word 'vest' is found in the Lands Clauses Consolidation Act 1845 (c. 18), where it is said, in s.81, that conveyances 'shall be effectual to vest the lands thereby conveyed in the promoters of the company'; and there is a proviso to the same effect in s.100. So the Trustee Act 1850 (c. 60), s.3 (cp. Trustee Act 1925 (c. 19), s.44), provides that the Chancellor may in certain cases make an order that 'such lands be vested in' certain persons. Then again in the Bankruptcy Act 1869 (c. 71), s.17 (see Bankruptcy Act 1914 (c. 59), s.53(1)), it is enacted that 'on the appointment of a trustee, the property shall forthwith pass to, and vest in, the trustee appointed.' So that is clear that there is an established meaning in which the word 'vest' is employed. I now turn to the Public Health Act 1875 (c. 55), ss.12, 13 (see Public Health Act 1936 (c. 49), s.20(1)); both contain the word 'vest,' and by the operation of those sections, the sewers become vested in the local board. Then, by s.149, the streets 'vest in' the same authority; and that means, I think, that the street must, as a matter of property, pass to the local board—that is, the surface of the street passes and some property in the soil is vested in the local board for the purposes for which the soil of the street is required by those who have to manage the street" (*per* Cotton L.J., *ibid.* 134); that is, the land forming the street does not vest down to the centre of the earth (*per* Bramwell L.J., *ibid.* 130) nor *usque ad cælum*; but so much depth passes to the local board as is required for the ordinary purposes of the street, including what may be required for water-pipes, gas mains, and the sewer system (*per* Brett L.J., *ibid.* 133; same case, 4 Q.B.D. 104; see also *Hinde v. Chorlton* L.R. 2 C.P. 104; *Rolls v. St. George, Southwark* 14 Ch. D. 785), and so much height over the street as is required for the preservation of its ordinary user (*Wandsworth v. United Telephone Co.* 13 Q.B.D. 904; *Fareham v. Smith* 7 T.L.R. 443). See also *Finchley Electric Co. v. Finchley* [1902] 1 Ch. 866; [1903] 1 Ch. 437. See also *per* Wright J., *Westminster v. Johnson* [1904] 2 K.B. 19, which dictum seems unaffected by the reversal of the

judgment ([1904] 2 K.B. 737), as that reversal turned rather on what was “having or holding” a “tenement or hereditament.”

(8) A power to a local authority to erect conveniences in a “street or public place,” does not sanction the construction of such conveniences below its surface (*Tunbridge Wells v. Baird* [1896] A.C. 434, cited PUBLIC PLACE, which see for disapproval by Lord Herschell of some of the dicta in *Coverdale v. Charlton* sup.). Cp. *London & North Western Railway v. Westminster* [1905] A.C. 426, cited SANITARY. But where a statutory power enables, e.g. a telegraph company to erect poles “on, in, over, or under, any street,” that authorises the erection of poles sunk into the ground to a depth of 6 feet (*Escott v. Newport* [1904] 2 K.B. 369). See also *Andrews v. Abertillery* 55 S.J. 347. See also *St. Mary, Battersea v. County of London Electric Lighting Co.* [1899] 1 Ch. 474; *Gibraltar Commissioners v. Orfila* 59 L.J.P.C. 95, cited CONTROL; *Salt Union v. Harvey* 61 J.P. 375, cited STREET.

(9) Streets, sewers, etc., which “vest” in a local authority for the purpose of duties to be performed, cease to be so vested when the duties are transferred to another body (*Eastbourne v. Bradford* [1896] 2 Q.B. 205).

(10) “Property of and in lands,” etc., “vested in the Commissioners of Sewers within or under whose view, cognisance, or management, such lands,” etc., should be (Sewers Act 1833 (c. 22), s.47): see *Stracey v. Nelson* 13 L.J. Ex. 97; *Crossman v. Bristol & South Western Railway* 11 W.R. 981.

(11) As to the interest acquired by public bodies, created for a particular purpose, in works such as embankments which are “vested” in them by statute, see *Port of London Authority v. Canvey Island Commissioners* [1932] 1 Ch. 446.

(12) The herbage on roadside wastes did not “vest” in a county council by Local Government Act 1888 (c. 41), s.11(6) (*Curtis v. Kesteven County Council* 45 Ch. D. 504, cited ROADSIDE WASTE).

(13) Property of an industrial society “shall vest” in the society on registration (Industrial and Provident Societies Act 1862 (c. 87), s.6): see *Queenshead, or Queensbury Industrial Society v. Pickles* 35 L.J. Ex. 1.

(14) Property “vested under this Act” (Public Health Act 1875 (c. 55), s.310), in improvement commissioners or a local board, included property acquired under the powers given by the Act (*Hyde v. Bank of England* 21 Ch. D. 176). Cp. ASSENT.

(15) Property of a dissolved district or union which, by Dissolved Boards of Management and Guardians Act 1870 (c. 2), s.12, was to be “transferred to and vested in” the persons acting as managers at the time of the dissolution, did not vest in them automatically; the language pointed to some act to be done (*Morton v. Bank of England* [1904] 1 Ch. 664).

(16) But by the Education Act 1902 (c. 42), ss.5, 27 (see Education Act 1944 (c. 31), ss.2, 6), school boards from “the appointed day” were “abolished,” and by s.25 and Sched. 2(1) the property of a school board “existing at the appointed day shall be transferred to the council exercising the powers of the school board,” i.e. shall vest in the council automatically and instantaneously on the appointed day, by virtue of the enactment alone (*Oldham v. Bank of England* [1904] 2 Ch. 716; but see *Morton v. Bank of England* sup.). See also *Re Wallsend and Northumberland County Council* [1906] 2 Ch. 506.

(17) “All hospitals vested in a local authority” (National Health Service Act 1946 (c. 81), s.6(2)). “Vested” indicates the ownership of a proprietary interest as part of the hospital undertaking. The subsection does not include a reversionary interest belonging to a local authority which was not itself carrying on a hospital or providing hospital services (*Minister of Health v. Stafford Corporation* [1952] Ch. 730).

(18) Forfeiture of a lease “if the lessee do or suffer any act or thing whereby the premises should become vested” in another, for the whole or part of the term, is incurred by a subletting from year to year, although the covenant in the lease be only against assignment (*Dymock v. Showell's Brewery Co.* 79 L.T. 329).

(19) An annuity did not vest in the Custodian of Enemy Property when a person who resided in metropolitan France became technically an enemy when that country was overrun in 1940. The Custodian is entitled only to the income (*Re Wightman* [1947] 2 All E.R. 647; see also *Re Pozot's Settlement Trusts* [1952] Ch. 427).

(20) Lunatic's personal estate “vested in” a person appointed for the management thereof (Lunacy Act 1890 (c. 5), s.134); there, “vested” was used in its wide sense of connoting the right to obtain and deal with the property, and not in its strict legal sense of becoming its actual legal owner (*Re Broom* [1895] 2 Ch. 666); see also *Re Knight* [1898] 1 Ch. 257.

(21) The property of a felon shall “vest” in the administrator (Forfeiture Act 1870 (c. 23), s.10): see hereon *Re Gaskell and Walters* [1906] 2 Ch. 1, cited FORFEITURE.

(22) A landlord's right to ground game “is vested” by lease, etc., pursuant to the saving clause (s.5), Ground Game Act 1880 (c. 47), even though it was only reserved by an agreement for a lease executed before, but not coming into operation till after, the Act (*Allhusen v. Brooking* 26 Ch. D. 559. See also *Montefiore v. Guedalla* [1901] 1 Ch. 435, cited BANKRUPTCY; *Re Tancred* [1903] 1 Ch. 724, cited DISPOSE OF; ALIENATION; CHARGE OR INCUMBER; WOULD.

(23) Inhabitants and ratepayers who had a right, under a founder's deed, to a free education for their children, but had no children whose status was injured by a scheme, had not a “vested interest” within Endowed Schools Act 1969 (c. 56), s.39 (*Re Shaftoe* 3 App. Ca. 872).

Property “transferred to or vested in” a purchaser: see DECREE.

See DIVEST; DESCEND.

Stat. Def., Finance Act 1951 (c. 43), s.33(5)(b).

VESTING. Vesting declaration, on the appointment of a new trustee: see Trustee Act 1893 (c. 53), s.12, on which see *London & County Bank v. Goddard* [1897] 1 Ch. 642, cited TRUST.

VESTMENTS. See *Ridsdale v. Clifton* 2 P.D. 276; *Elphinstone v. Purchas* L.R. 3 A. & E. 66; and *Hebbert v. Purchas* L.R. 3 C.P. 605, cited ORNAMENT; *Enraght v. Penzance* 7 App. Ca. 240. Cp. VESTURE.

VESTRY. “The primary meaning of the term ‘vestry’ is the place in which the minister puts on his vestments”; its secondary meaning is the room in which the parishioners are entitled to meet for parish purposes (*per* Erle J., *Jackson v. Courtenay* 8 E. & B. 19).

VESTURE. “‘Vesture’ signifies a garment; but in the law, metaphorically turned to betoken a possession, or an admittance to a possession or seisin; so it is taken in *Westm.* 2, cap. 25. And in this signification 'tis borrowed of the Feudists, with whom investiture signifies a delivery of possession by a speare or staff, and vestura possession it self” (Cowel).

See HERBAGE; VEST.

VETERINARY. To call oneself a “veterinary chemist,” in a book or otherwise, in the sense of preparing veterinary medicines for sale, was not to “take or use the title of veterinary surgeon or veterinary practitioner” within Veterinary Surgeons Act 1881 (c. 62), s.17(1) (*Royal College of Veterinary Surgeons v. Groves* 9 T.L.R. 483; cp. *Brown v. Whitlock* 67 J.P. 451, cited ADDITION; DENTIST; *Royal College of Veterinary Surgeons v. Collinson* [1908] 2 K.B. 248); nor was the exhibition of the words “canine surgery” over the entrance door to premises of an unqualified person: see *Royal College of Veterinary Surgeons v. Kennard* [1914] 1 K.B. 92; see also *A.-G. v. Churchill’s Veterinary Sanatorium* [1910] 2 Ch. 401. But see QUALIFIED. See TAKE; USE.

“Veterinary practitioner”; “veterinary surgeon.” Stat. Def., Animal Boarding Establishments Act 1963 (c. 43), s.5(2).

“Veterinary surgery.” Stat. Def., Veterinary Surgeons Act 1966 (c. 36), s.27.

“Veterinary drug,” “veterinary practitioner,” “veterinary surgeon.” Stat. Def., Medicines Act 1968 (c. 67), s.132; Misuse of Drugs Act 1971 (c. 38), s.37; Poisons Act 1972 (c. 66), s.11.

See LICENSED MEDICAL PRACTITIONER.

VEX. “Disturb, vex, or trouble”: see DISTURB.

VEXATIOUS. (1) The action a “vexatious defence” to which was a bankruptcy offence under Bankruptcy Act 1861 (c. 134), s.159 (see Bankruptcy Act 1914 (c. 59), s.26(g)), was one for a debt or liquidated damages as distinguished from a tort (*Ex p. Crabtree* 33 L.J. Bank 33).

(2) Where the plaintiff has started proceedings in a foreign court, and has good security there, it is “vexatious and an abuse of the process of the court” to allow proceedings to continue in the English court (*The Cressington Court (Owners) v. The Marinero (Owners)* [1955] P. 68).

(3) “Where the taxing officer is satisfied that an issue has been vexatiously and improperly put on the record” he is not to allow the costs of that issue (*per* Sir Creswell Creswell in *Allen v. Allen and D’Arcy* (1860) 2 Sw. & Tr. 107). The petition of a wife based on evidence short of the truth and containing much invention, is not necessarily “vexatiously and improperly put on the record” within the above, nor does it constitute the institution of “vexatious legal proceedings” within the meaning of the Supreme Court of Judicature (Consolidation) Act 1925 (c. 49), s.51 (*Bock v. Bock* [1955] 1 W.L.R. 843).

(4) Vexatious removal of indictments into the Queen’s Bench: see *R. v. Manchester* 7 E. & B. 460.

Vexatious Indictments Act 1859 (c. 17): see also Administration of Justice (Miscellaneous Provisions) Act 1933 (c. 36), s.2.

Vexatious actions: see Vexatious Actions Act 1896 (c. 51).

See FRIVOLOUS; IMPROPER; SCANDALOUS.

VEXATIOUSLY. See UNREASONABLY.

VI, CLAM, PRECARIO. An easement to be acquired by prescription must be “nec vi, nec clam, nec precario”: see hereon *per* Lord Selborne, *Macpherson v. Scottish Recreation Society* 13 App. Ca. 749; Gale (12th ed.), 214 *et seq.* See also *per* Stirling L.J., *Union Lighterage Co. v. London Graving Dock Co.* [1902] 2 Ch. 574, citing *Dalton v. Angus* 6 App. Ca. 740; *Liverpool Corporation v. Coghill* [1918] 1 Ch.

307; *per* Farwell J., *Burrows v. Lang* [1901] 2 Ch. 511, cited **PRECARIO**; *Lyell v. Hothfield* [1914] 3 K.B. 916.

VI ET ARMIS. See **FORCE**.

VICAR. (1) “The priest of every parish is called rector, unless the prædial tythes be impropriated and then he is called vicar, *quasi vice fungens rectoris*” (Cowel). The status of a modern vicar was originated by 4 Hen. 4, c. 12. See also *Phil. Ecc. Law* (2nd ed.).

(2) As to the vicar’s rights in church and churchyard, see judgment of Blackburn J., *Greenslade v. Derby* L.R. 3 Q.B. 421, cited **PERPETUAL CURATE**.

(3) “The words ‘rectorial’ and ‘vicarial’ tithes have no definite signification” (*Note*, to 1 Bl. Com. 387).

See **CLERGYMAN**; **MINISTER**; **PARSON**; **RECTOR**.

VICAR CHORAL. A vicar choral is a minor officer of a cathedral whose duty is (as a “singing-man”) to assist in the services (*Phil. Ecc. Law* (2nd ed.), 143), and is, generally, a corporation sole, and as such his personal representative is liable for **DILAPIDATIONS** of the house held by him *virtute officii* (*Gleaves v. Parfitt* 7 C.B.N.S. 838).

VICAR-GENERAL. See *Thorpe v. Mansell* 1 Hagg. Con. 4, n. See also *R. v. Canterbury (Archbishop)* [1902] 2 K.B. 503; see **CHANCELLOR**.

VICE. (1) The inherent “vice” of a thing—damage from which is not included in the implied insurance by a common carrier or in a contract for sea carriage—means that which is, necessarily, incidental to the property, rather than occasioned by an adventitious cause such as loss by worms (*Rhol v. Parr* 1 Esp. 444), or rats (*Hunter v. Potts* 4 Camp. 203), or the self-ignition of damaged hemp (*Boyd v. Dubois* 3 *ibid.* 133), cited and adopted by Willes J., *Great Western Railway v. Blower* L.R. 7 C.P. 663).

(2) “Vice,” in an animal, means “that sort of vice which by its internal development tends to the destruction or the injury of the animal or thing to be carried and which is likely to lead to such a result” (*per* Willes J., *Great Western Railway v. Blower* L.R. 7 C.P. 662), *e.g.* restiveness (*ibid.*), or fright, temper, or struggling to keep its legs *per* Bramwell B., *Kendall v. London & South Western Railway* L.R. 7 Ex. 373; see also *per* Mellish L.J., *Nugent v. Smith* 1 C.P.D. 439). A dog may be dangerous from nervousness, without being vicious (*M’Donald v. Smellie* 40 Sc. L.R. 702). “Vicious,” as applied to animals, indicates a savage disposition or propensity to attack people (*Brock v. Richards* [1951] 1 K.B. 529).

See **SOUND**; **WARRANTED SOUND**; **INHERENT VICE**.

VICINAGE. “Common pur cause de vicinage”: see **COMMON**; *Cape v. Scott* L.R. 9 Q.B. 269; *Commissioners of Sewers v. Glasse* L.R. 19 Eq. 134.

VICINITY. (1) “In the vicinity of any prohibited place” (Official Secrets Act 1920 (c. 75), s.3) means “in or in the vicinity of” the place (*Adler v. George* [1964] 2 Q.B. 7).

(2) “In the vicinity” (Dock Works (Regulation of Employment) Act 1946 (c. 22), s.6), see *National Dock Labour Board v. John Bland & Co.* [1971] 2 W.L.R. 1491.

VICTUALLER. See **PUBLICAN**.

VICTUALLING-HOUSE. A victualling-house is a house where persons are provided with victuals, but without lodging (1 Burn's Jus. Peace (30th ed.), 64). It would be probably safe to add that a place could scarcely have been called a "victualling-house" unless licensed under Alehouse Act 1828 (9 Geo. 4, c. 61). That technical sense would seem to be impressed on the word by its use in the statute just mentioned in collocation with inns and alehouses. Blackstone (3 Com. 164) speaks of an "innkeeper or other victualler"; but a victualling-house is differentiated from an inn, because a victualling-house does not provide lodging; but it would seem the exact equivalent of "alehouse."

See ALEHOUSE; INN; PUBLIC HOUSE.

VICTUALS. "Victuals" comprises everything that is food for man, and everything which, when mixed with something else, constitutes such food (*R. v. Hodgkinson* 10 B. & C. 74).

VIDELICET. See *Dakin's Case* 2 Wms. Saund. (6th ed.), 678; NAMELY; THAT IS TO SAY. See also *Ambatielos v. Anton Jurgens* [1923] A.C. 191.

VIDIMUS. "An *innotescimus*, or *vidimus*, are all one, and are always a charter of feoffment, or some other instrument which is not of record" (*Page's Case* 5 Rep. 53, b, 54 a).

VIEW. (1) " 'View' is the primary part of 'survey'; and survey is much, but not altogether, directed by view. It is true that view is of great use in the common law, and it is to be done and performed in person. . . . In a word, there is a diversity between a view and a survey, for by the view one is to take notice only by the eye; but to survey is not only to take notice of a thing by the eye, but also by using other ceremonies and circumstances, as the hand to measure and the foot to pace the distances" (Callis, 105, 106). See also *Termes de la Ley*, *View*; Cowel; Jacob; R.S.C., Ord. 35, r. 8.

(2) "View of frankpledge" was the office of the sheriff in his county court, or the bayliff in his hundred, to see that every man was in some pledge (Cowel; *Termes de la Ley*); see hereon 4 Bl. Com. 273.

(3) In "view" of a constable (Metropolitan Police Act 1839 (c. 47), s.63), *semble*, connoted that the constable actually saw and had view of the offence; the phrase was not equivalent to "found committing" in s.66 (*Simmons v. Millingen* 2 C.B. 524 cited *FOUND*).

(4) "Upon such view," whereby justices might order diversion, etc., of a highway (Highway Act 1835 (c. 50), s.85), meant that the justices making the certificate were themselves to have actual and joint inspection of the highway (*R. v. Downshire* 5 L.M.J.C. 72; *R. v. Jones* 10 L.J.M.C. 5; *R. v. Cambridgeshire Justices* 5 L.J.M.C. 6; *R. v. Wallace* 4 Q.B.D. 641). A compliance with these conditions would have been sufficiently stated, by the certificate reciting that "having upon view found" (*R. v. Cambridgeshire* sup.); *secus*, if it said "having particularly viewed," etc., "and being satisfied," etc., (*R. v. Downshire* sup.), or "having viewed," etc., "and it appearing unto us," etc., (*R. v. Jones* sup.). As to the publication of the notices, and as to the certificate, and consent in writing of owners, see *R. v. Kent Justices* [1905] 1 K.B. 378; see also *AFFIX*. From long user a presumption might have been drawn that the requirements of Highway Act 1835, ss.84-92 (sup.), had been complied with (*Leigh Urban Council v. King* [1901] 1 K.B. 747; but see *Cababé v. Walton-on-Thames* [1914] A.C. 117). If it was found that an

appellant would be “injured or aggrieved” (s.89), the appeal had to be allowed, though the proposed diversion would have been commodious to the public (*Walker v. York* [1906] 1 K.B. 724; *Linton v. Newcastle* 92 J.P. 187).

(5) (a) “With ‘a’ view” to giving a creditor a preference, means with ‘the’ view (see A). In deciding that that kind of “view” must be one for the benefit of a creditor, as distinguished from the bankrupt’s own benefit, *e.g.* to avoid the consequences of his own breach of trust, Williams J., said: “It is very easy to confuse ‘motive’ and ‘view.’ In fact, it is so easy to confuse ‘motive’ and ‘view’ that there are numberless words in the English language which have a double or equivocal meaning, and are sometimes used to express motive and sometimes to express view. Let me illustrate by an example what I consider to be the difference between the meaning of these two words, and the meaning of ‘view’ in this section. I do not assent to the suggestion that ‘view’ means the primary result aimed at. If ‘view’ meant the primary result aimed at, every case would fall within Bankruptcy Act 1883 (c. 42), s.48 (see Bankruptcy Act 1914 (c. 59), s.44), in which it was proved that in fact a creditor was preferred and that the preference of that creditor was the necessary result of the act done by the bankrupt. It seems to me plain that this is not the meaning of the statute. The word ‘view,’ as is used in this section, is used to express the object aimed at by the bankrupt in bringing about the primary result. Now, although the motive is not the thing that we are to look for but view, it is plain (as was pointed out by Lord Esher, *Ex p. Taylor* 18 Q.B.D. 295, cited A) that ascertaining the motive will very often assist you in determining what is the view. Suppose a case where the question was whether a man set fire to his house with the intention to injure his landlord or with the intention to defraud an insurance company. In such case, in my judgment, the setting fire to his house would be the primary object of that which he did, but that would leave open the question, whether he aimed at or effected that object with a view to injure his landlord or with a view to defraud the insurance company. Now, in order to ascertain that, you would be much assisted by ascertaining what his desire was, *i.e.* what the motive was that induced him to set fire to his house. You would have to take into consideration all the circumstances of the case. If you found that he was over-insured, that would be a strong piece of evidence to show that his view in setting fire to his house was to defraud the insurance company. If, on the other hand, you found that he was not over-insured but that he was angry with his landlord for having given him notice to quit, that would be a strong piece of evidence to show that his view was not to defraud the insurance company but to injure his landlord. And in the same way, in bankruptcy, you have the payment of the creditor, which is equivalent to the analogous case I have taken of setting fire to the house. With what view did the debtor make the payment to the creditor? Did he make it from a sense of duty, from a sense of favour or kindness towards the creditor? So here, the mere fact that there had been a breach of trust and that therefore it was possible that he should make the payment from a sense of duty is by no means conclusive. There might be other facts, such as his connection in blood with the cestui que trust, which might suggest that the dominant view was not to repair the wrong done, but to favour one of his relatives” (*New’s Trustee v. Hunting* [1897] 1 Q.B. 616, 617). That exposition seemed too subtle for Esher M.R., who (whilst agreeing with other members of the Court of Appeal in upholding the actual decision of Williams J.) said, “In my opinion, what the debtor did he did ‘with the object,’ or ‘with the view,’ or ‘for the purpose’ (I care not about the particular phrase), not of preferring the particular creditors, but for his own purposes” (*ibid.* [1897] 2 Q.B. 27, affirmed in House of Lords, nom. *Sharp v. Jackson* [1899] A.C. 419; see *Re Lake* [1901] 1 K.B. 710;

Bankruptcy Act 1914 (c. 59), s.44; *Re Drage* 134 L.T. 765; cp. *Re Dodds* 60 L.J.Q.B. 599; *Re Blackburn* [1899] 2 Ch. 725. Cp. INTENT; PURPOSE.

(b) When s.44(1) of the Bankruptcy Act 1914 (c. 59) speaks of a disposition made with a "view" to giving a creditor a fraudulent preference it means with an intention of doing so. It is for the person seeking to set aside the disposition to establish that intention on the debtor's part, but it can be inferred from the circumstances (*Re Holmes (Eric) (Property)* [1965] Ch. 1052). See also *Re Cutts (a Bankrupt), ex p. Bognor Mutual Building Soc. v. Cutts (Trustee of)* [1956] 1 W.L.R. 728).

(c) So (*Ex p. Hill, Re Bird* 23 Ch. D. 704), Bowen L.J., said that, in nine cases out of ten, "with the view" and "with the motive" are synonymous; see also *per* the same learned judge, *Ex p. Griffith, Re Wilcoxon* 23 Ch. D. 69. For an example of circumstances showing the view of a debtor when, being in insolvent circumstances, he pays a creditor, see ORDINARY COURSE.

(6) "View or intent" of residence: see *Inland Revenue Commissioners v. Cadwalader* 42 Sc. L.R. 117, cited TEMPORARY.

(7) "View, cognisance or management" (Sewers Act 1833 (c. 22), s.47): see *Nesbitt v. Marylebone Urban District Council* [1918] 2 K.B. 1.

See PRESENCE; TREAT AND VIEW.

VILL. (1) "Vill" was synonymous with town (Co. Litt. 115 b; 1 Bl. Com. 114), and, if of the same name as the parish, is coterminous with it until the contrary is proved (*Gibson v. Clark* 1 Jac. & W. 159; *Wray v. Vesper Cro.* Jac. 263); but there may be two or more vill in one parish, and, if one be of the same name as the parish, a conveyance of lands in a place of that name includes only those in the vill (*Stork v. Fox Cro.* Jac. 120). See also HAM; HAMLET; TOWNSHIP. See also *Cowes v. Southampton Steam Packet Co.* [1905] 2 K.B. 287.

(2) As to distinction between "vill" and "parish," as a description of a locality, see Elph. 168, n.

See VILLAGE.

VILLAGE. (1) In Coke's time "village" and "town" seem, in law, to have been synonymous (Co. Litt. 115 b; see also Index to Co. Litt. tit. "Village"). So in the *Touchstone* (p. 92), "This word (village or town) is of large extent. And by the grant of it, a manor, land, meadow and pasture, and divers such like things may pass." See VILL.

(2) "Village" was discussed in *Waterpark v. Fennell* 7 H.L. Ca. 650; 5 Ir. Com. Law. Rep. 120; see also *Anon.*, 12 Mod. 546; *R. v. Showler* 3 Burr. 1391; *R. v. Horton* 1 T.R. 374.

"Town or village green." Stat. Def., Commons Registration Act 1965 (c. 64), s.22(1). See TOWN.

VILLANI. (1) "Villani in Domesday (often named) are not taken there for bondmen, but had their name de villis, because they had fermes, and there did worke of husbandry for the lord; and they were ever named before bordarii, etc., and such as are bondmen are called there servi" (Co. Litt. 5 b; see also *ibid.* 116 a; Jacob, Servi, Villain). See BORDARII; VILLEIN.

(2) To call a man a "villain" is not actionable, *per se* (*per* Pollock C.B., *Barnett v. Allen* 27 L.J. Ex. 412); *secus*, if you write that of him (*Bell v. Stone* 1 B. & P. 331). Cp. CHEAT.

VILLEIN. A villein was “a man of servile or base degree,” bound to obey his lord’s behest, “and whom his lord might put out of his lands and tenements, goods and chattels, at his will” (Cowel), and whom the lord might “robbe, beat, and chastise, at his will, save onely that he might not maim him” (Termes de la Ley, Villeinage). See also HEREDITAMENT; VASSAL; VILLANI; WAINAGE.

(2) Villenage was a servile tenure, whereby the tenant (though not, necessarily, a villein) “was bound to do all such services as the lord commanded, or were fit for a villein to do” (Cowel). See also Litt. Book 2, ch. 11; Co. Litt. 116 a–114 b; 2 Bl. Com. 92, 93; *per Hargrave arg. Somersett’s Case*, 20 State Trials, 35 *et seq.*

Villein Regardant: see GROSS; Cowel, *Regardant*.

See NEIFE.

VILLIERS’ ACTS. Public Works (Manufacturing Districts) Act 1836 (c. 70).

Union Chargeability Act 1865 (c. 79).

VINDICTIVE. “Vindictive damages” are those damages which are “not merely compensation for damage to land or goods (or the person?), but something more; and, so far as they are more, they are in character ‘vindictive’ in the legal sense” (*per Collins L.J., Rose v. Buckett* [1901] 2 K.B. 456; see also *Pratt v. B.M.A.* [1919] 1 K.B. 244).

VINTNER. “Vintner” means one who sells wine, and a covenant prohibiting the trade of a “vintner” includes a person selling wine not to be drunk on the premises (*Wells v. Attenborough* 24 L.T. 312); and, by statute, the prohibition, in a lease, of the business “of a vintner,” would include the sale of wines to be consumed on the premises under the Refreshment Houses Act 1860 (c. 27), s.44.

VIOL. See BELONGING.

VIOLATE. A bequest to found an institution will, generally, be valid if it be added “so as not to violate the Mountain Acts” (*Biscoe v. Jackson* 35 Ch. D. 460). See FOUND.

VIOLENCE. “External and accidental violence”: see *Mardorf v. Accident Insurance* [1903] 1 K.B. 584, cited DIRECT CAUSE; see EXTERNAL; CRIME.

VIOLENT. An insurance against “theft following upon actual, forcible, and violent entry upon the premises”; held, not to include a thieving where the thief only had to turn the shop door-handle and walk in (*George v. Goldsmiths Insurance* [1899] 1 Q.B. 595). In that case Wills J., said, in the Divisional Court (67 L.J.Q.B. 808), “If the word had been merely ‘forcible’ then any unauthorised entry in the course of which any degree of force, however slight, was used would have been enough. That expression would have included turning the door-handle, pushing back a window-catch, or opening a locked door with a skeleton key. What difference does the addition of ‘violent’ make? Does it mean any more than ‘forcible’? Upon the whole, I think not. Etymologically, the meaning of both words is the same.” But that reasoning did not commend itself to the Court of Appeal.

See EXTERNAL.

VIRGATA TERRÆ. See YARDLAND.

VIRTUE. See BY VIRTUE; *Canada Steamship Lines v. R.* [1952] A.C. 192.

VIS MAJOR. See ACT OF GOD; IRRESISTIBLE.

VISIBLE. (1) “Visible means” as used in County Courts Act 1867 (c. 142), s.10 (see County Courts Act 1959 (c. 22), s.46(1)), is not (as was laid down by White-side C.J., *Counsel v. Garvie* Ir. Rep. 5 C.L. 74, 77) to be narrowed so as to be synonymous with “tangible means”; but, at the same time, effect is to be given to the word “visible,” and therefore “the words refer to means of paying which are visible to the bodily or mental eye of an attentive observer—means of payment which the person who makes the affidavit can fairly ascertain” (*per* Fry L.J., *Lea v. Parker* 13 Q.B.D.). The right conferred by s.46 of the Act of 1934 is not taken away by Legal Aid and Advice Act 1949 (c. 51) (*Burton v. Holdsworth* [1951] 2 K.B. 703).

(2) “Visible means of support” (Mental Deficiency Act 1913 (c. 28), s.2(1)): see *R. v. Radcliffe* [1915] 3 K.B. 418; *Re Wilkinson* 83 J.P. 422.

“Visible means” causing injury: see EXTERNAL.

Visible waters: see DEFINED CHANNEL.

VISIT. See ASSOCIATE.

VISITOR. “Visitor” (Occupier’s Liability Act 1957 (c. 31), s.2(1)). A person who exercises his public or private right of way over a bridge owned by the British Railways Board is not a “visitor” of the Board within the meaning of this section (*Greenhalgh v. British Railways Board* [1969] 2 Q.B. 286). Similarly a milkman exercising his right of way over land was not a “visitor” of the landowner when his purpose was the delivery of milk to another person (*Holden v. White* [1982] 2 W.L.R. 1030).

See also *Baxendale v. North Lambeth Liberal Club* [1902] 2 Ch. 429, cited WAY; *Keith v. Twentieth Century Club* 73 L.J. Ch. 549, cited FRIEND; *Thornton v. Little* 23 T.L.R. 357; *Hammond v. Prentice* [1920] 1 Ch. 201.

VITREOUS. “Vitreous: 65%” in a contract for the sale of hard wheat refers to the percentage content of the whole consignment including any of the hard part of the grain which is mitadined (*Compagnie Algérienne de Meunerie v. Kyprianou* [1961] 2 Lloyd’s Rep. 113).

VIVARY. Vivary, vivarium, is a word of large extent, signifying a place in land or water where living things are kept, *e.g.* parks, warrens, piscaries or fishings (2 Inst. 100), or a stew (*ibid.* 162). By the grant of a “vavarye,” “not onely the privilege, but the land itselfe passes” (Co. Litt. 5 b).

VIVER. “Viver or vivier—a fishpond; 2 Inst. 199.”

VIZ. See NAMELY; VIDELICIT.

VOCALIST. An entertainer whose performance contains no musical element is not a “vocalist” within the meaning of the word as used in an innkeeper’s licence which restricted performances other than by vocalists (*Whitehead v. Haines* [1965] 1 Q.B. 200).

VOCATION. (1) Turf “bookmaking” is a “vocation” within the Income Tax Act 1842 (c. 35)—see Income and Corporation Taxes Act 1970 (c. 10), s.109—and as such its profits are assessable (*Partridge v. Mallandain* 18 Q.B.D. 276). In that case

Denman J., said that even an illegal vocation would be taxable on its income; as “if a man were to make a systematic business of receiving stolen goods, and to do nothing else, and were thereby to make a profit of (say) £2,000 a year, the Income Tax Commissioners would be quite right in assessing him, if it were, in fact, his vocation.”

(2) Where an appellant’s sole means of livelihood was derived from backing horses from his residence at starting price, it was held that the aggregate of winnings was not derived from a “vocation” within the meaning of Income Tax Acts (sup.)—see *Graham v. Green* [1925] 2 K.B. 37.

(3) “Vocation” (Sex Disqualification (Removal) Act 1919 (c. 71), s.1) could include the training of racehorses (*Nagle v. Fielden* [1966] 2 Q.B. 633).

(4) “Vocational school” (EEC Council Regulation No. 1612/68, art. 7(3)); Education (Mandatory Awards) Regulations 1983 (No. 1135) does not refer only to establishments offering manual and technical courses. The test is whether the training is intended to prepare or qualify a person for a particular vocation or job. Thus a college of higher education or a faculty of education at a university would be “vocational” schools, whereas a law faculty offering an LL.B. course, being academic in nature, would not (*R. v. I.L.E.A., ex p. Hinde, Duverley and Phillips* (1985) 83 L.G.R. 695).

See BOOKMAKER; CALLING; PUBLIC OFFICE.

VOICE. “Multiply voices”: see *Phillpotts v. Phillpotts* 10 C.B. 85, cited VOID; SPLIT.

VOID. (1) “The word ‘void’ has never been an easy word. . . . It is commonly said that when it describes a juristic act it means that it was always devoid of legal consequences. But this itself is ambiguous” (*per* Windeyer J., in *Brooks v. Burns Philp Trustee Co.* (1969) 43 A.L.J.R.).

(2) When a deed or other transaction is “void” on default of doing or suffering something by one of the parties thereto, this means voidable at the election of the party not in default (*Hughes v. Palmer* 19 C.B.N.S. 393; *Molton v. Camroux* 2 Ex. 487; 4 Ex. 17). “In a long series of decisions the courts have construed clauses of forfeiture in leases, declaring in terms however clear and strong that they shall be void on breach of conditions by the lessees, to mean that they are voidable only at the option of the lessors. The same rule of construction has been applied to other contracts where a party bound by a condition has sought to take advantage of his own breach of it to annul the contract: *Doe d. Bryan v. Bancks* 4 B. & Ald. 401; *Roberts v. Davey* 4 B. & Ad. 664; notes to *Dumpro’s Case* 1 Smith’s L.C. 54” (*per* Sir M. E. Smith, delivering the judgment *Davenport v. The Queen* 47 L.J.P.C. 16; 3 App. Ca. 128). See also *Dakin v. Cope* 2 Russ. 174, 175; *Malins v. Freeman* 4 Bing. N.C. 395; *Re Tickle* 3 Morr. 126; Woodf. (24th ed.), 252. In *Bowser v. Colby* (1 Hare, 130, 131), Wigram V.-C., for the purpose of holding the lease voidable, seems to have relied on the fact that in the clause for forfeiture the right of re-entry preceded the declaration that the lease should be void; but, *semble*, the case he cited (*Arnsby v. Woodward* 6 B. & C. 519), shows that the construction may be the same though the declaration of voidness precedes the right of re-entry.

(3) And so of statutes: “In general, it would seem, that where the enactment has relation only to the benefit of particular persons, the word ‘void’ would be understood as ‘voidable’ only, at the election of the persons for whose protection the enactment was made and who are capable of protecting themselves (see *Davis v.*

Bryan 6 B. & C. 651, cited by Cotton L.J., *Re London Celluloid Co.* 39 Ch. D. 203); but that when it relates to persons not capable of protecting themselves, or when it has some object of public policy in view which requires the strict construction, the word receives its natural full force and effect" (Bayley J., in *R. v. Hipswell* 8 B. & C. 471). See also *Betham v. Gregg* 3 L.J.P.C. 121; *Storie v. Winchester* 17 C.B. 653; *Hyde v. Watts* 13 L.J. Ex. 41, cited FORTHWITH. Thus, the provision that no apprenticeship provided for by public parochial funds, should be "valid and effectual" unless approved under "the hands and seals" of two justices (Parish Apprentices Act 1816 (c. 139), s.11), rendered absolutely void an indenture approved by two justices under their hands only (*R. v. Stoke Damerel* 7 B. & C. 563). Cp. ILLEGAL.

(4) "I think it will be found that the cases in which the less strict meaning is allowable may be divided into three classes—

"1. Where as a matter of construction according to ordinary rules that is the sense of the language used.

"2. Where the strict meaning would defeat the Act itself.

"3. Where that strict meaning would be inconsistent with some other statute, or some legal principle, which there is no apparent intention to disturb.

"It is for those who support the less strict meaning in any particular case, to prove that it falls within one of these classes; or, as was said by Lord Cairns in *Magdalen Hospital v. Knotts* (inf.), 'the onus lies upon those who would cut down or qualify the effect of these words to show some ground, either from the nature of the case or from authority, for doing so' " (*per Kekewich J., Churcher v. Martin* 42 Ch. D. 317).

(5) "If it be doubtful whether a statute declaring an act, instrument, or contract void, make it voidable only, another clause in the same statute imposing a penalty on such act, instrument, or contract, is a clear test that it is *ipso facto* void" (Dwar. 640). The penalty makes it illegal (*Gye v. Felton* 4 Taunt. 876). "*Nota*, every contract made for or about any matter or thing which is prohibited and made unlawful by any statute, is a void contract, though the statute itself doth not mention that it shall be so but only inflicts a penalty on the offender; because a penalty implies a prohibition though there are no prohibitory words in the statute" (*per Holt C.J., Bartlett v. Vinor* Carth. 252; and see *Langton v. Hughes* 1 M. & S. 593; *Re M—* [1921] 2 K.B. 716), e.g. prohibition against watermen taking apprentices before being householders (Thames Watermen Act 1737 (c. 31), s.5) (*R. v. Gravesend* 1 L.J.M.C. 20).

(6) When an Act says that anything shall be void "*to all intents and purposes*," the phrase italicised seems little more than an expletive. If a thing is "void," it is empty—without force. Can a cistern be more than empty, or a body be more than still? The older authorities seem conformed to this reasoning; and seem to have established that there was no appreciable difference between declaring a thing "void" and declaring it "void to all intents and purposes." Thus, it has been stated, "where Acts of Parliament make a thing void, it shall be void to all intents and have a very violent relation" (Dwar. (2nd ed.), 653). So that "void" would seem to mean as much without, as with, the added phrase "to all intents and purposes"; whilst the addition of the phrase has not prevented the judicature, as circumstances have justified, from construing the thing as absolutely void in some, and as only voidable in others, of its aspects. Thus by 13 Eliz., c. 10, s.3, leases by spiritual persons not made in conformity with that statute "shall be utterly void and of none effect, to all intents constructions and purposes"; yet it has been frequently held that leases not in such conformity are good during the life of the lessor, and are only voidable by

the successor, and even he may confirm them (Woodf. (24th ed.), 103). But if the lessor have no beneficial interest, *e.g.* a hospital, a lease in contravention of this section is altogether void (*Magdalen Hospital v. Knotts* 48 L.J. Ch. 579; 4 App. Ca. 324); so, of a lease in contravention of Charitable Trusts Amendment Act 1855 (c. 124), s.29 (*Bangor (Bishop) v. Parry* [1891] 2 Q.B. 277).

(7) The words “utterly void” in Benefices Act 1571 (c. 20), s.1, and the words “utterly void to all intents and purposes” in the Shipping Act 1786 (c. 60), s.17, did not prevent the courts from giving partial effect to instruments not in conformity with those statutes (*Mouys v. Leake* 8 T.R. 411; *Kerrison v. Cole* 8 East, 234). So, a bill for a gaming debt, though “utterly void, frustrate, and of none effect to all intents and purposes whatsoever” (Gaming Act 1710 (c. 19), s.1), was good in the hands of an indorsee for value (*Edwards v. Dick* 4 B. & Ald. 212); nor did those words invalidate a judgment for a gaming debt obtained by an innocent plaintiff suing on a negotiable security, the defendant having full opportunity to defend the action and to set up the illegality of the security as an answer (*Lane v. Chapman* 9 L.J.Q.B. 239). So, a purchaser at an auction who ought to have paid the (abolished) auction duty and did not, could not repudiate his contract, although failing such payment, his bidding was “null and void to all intents and purposes” (Auctioneers’ Licences Act 1776 (17 Geo. 3, c. 50), s.8) (*Malins v. Freeman* 7 L.J.C.P. 212; see also *Willson v. Carey* 12 L.J. Ex. 17; *Rickard v. Graham* [1910] 1 Ch. 722).

(8) (a) In Fraudulent Conveyances Act 1585 (c. 4), s.2, vacating, in favour of purchasers, fraudulent conveyances, the phrase was that they shall be “utterly void, frustrate, and of none effect”; see thereon *Gooch’s Case* 5 Rep. 60 b.

(b) The decisions on the Artificers and Apprentices Act 1562 (c. 4), whilst they show how little the courts refused to consider the word “void” as intensified by superadded phrases, show also that on the same words, in the same statute, an informal indenture of apprenticeship would be held void for some purposes, and only voidable for others. The language of the statute (s.41) is that all indentures of apprenticeship, not in conformity thereto, shall be “clearly void in law, to all intents and purposes whatsoever.” Yet to enable an infant apprentice to gain a parochial settlement, it was held that an apprenticeship indenture not in conformity, was merely voidable between the parties (*R. v. St. Nicholas* 1 Bott, 530, on which see *R. v. Gravesend* sup.; *R. v. St. Gregory* 4 L.J.M.C. 9; *Gray v. Cookson* 16 East, 13); but when a master, citing *R. v. St. Nicholas* and other such like cases, sought to recover damages for harbouring an apprentice who had been bound by an indenture not in conformity with the statute, it was held he could not recover (*Gye v. Felton* 4 Taunt. 876).

(9) So, in an almost undeviating course, run the older authorities, which seem to justify the statement that the phrase “to all intents and purposes,” in connection with the word “void,” is little more than an expletive. But in *Phillpotts v. Phillpotts* (10 C.B. 85), Maule J., comments on the absence of the phrase in the provision then under consideration (see also *per Chelmsford C.*, in *Parker v. Taswell* inf.); and in *Re Toomer, Ex p. Blaiberg* (23 Ch. D. 254) Jessel M.R., in some measure leant on its absence in Bills of Sale Act 1878 (c. 31), s.8, for the purpose of holding that a bill of sale which would have been void against an execution creditor, was not so, under the circumstances, as against a trustee in bankruptcy; whilst in *Davies v. Rees* (17 Q.B.D. 408), Esher M.R., seems to have read the phrase into Bills of Sale Act 1882 (c. 43), s.9, for the purpose of giving the word “void” its most absolute effect. Bills of Sale Act 1878, s.8, only made an unregistered bill of sale void as against the persons therein mentioned (*Davies v. Goodman* 5 C.P.D. 128; *Cookson v. Swire* 54 L.J.Q.B. 249, applied in *Antoniadi v. Smith* [1901] 2 K.B. 589; see also

Hopkins v. Gudgeon [1906] 1 K.B. 690); under s.8 of the Act of 1882, it is void even as between grantor and grantee (*Davies v. Rees* sup.; per Lindley L.J., *Re Townsend* 16 Q.B.D. 532), but only, as provided by the concluding words of the section, “in respect of the personal chattels comprised therein” (*Heseltine v. Simmons* [1892] 2 Q.B. 547). If “void” for not being in accordance with the form prescribed (s.9), a bill of sale is void even as regards its covenants (*Davies v. Rees*, *Re Townsend*, and *Heseltine v. Simmons* sup.), and also as to personal chattels duly described and granted (*Thomas v. Kelly* 13 App. Ca. 506); but even this stringency does not make a bill of sale void as to property not subject to the Bills of Sale Acts (*Re Burdett* 20 Q.B.D. 310; *Re Isaacson* [1895] 1 Q.B. 333; *North Wales Produce & Supply Society* [1922] 2 Ch. 340, cited COMPANY; *Scott v. Shaw & Lee* [1928] 2 K.B. 26; *Shears v. Jones* [1922] 2 Ch. 802).

(10) In discussing the meaning of this word in a contract, Lord Reading C.J., said that in every contract the word “void,” according to its natural and ordinary meaning, means void to all intents and purposes, but unless there are clear words to the contrary, a clause making a contract void must be read subject to the condition that the party seeking to set up the invalidity is not himself in default: see *New Zealand Shipping Co. v. Société des Ateliers* [1917] 2 K.B. 717, affirmed [1919] A.C. 1. See also *Re Meyrick’s Settlement* [1921] 1 Ch. 311.

(11) The principle of *Davies v. Rees* 17 Q.B.D. 408, is applicable to “void” as used in Deeds of Arrangement Act 1887 (c. 57), s.5—see Deeds of Arrangement Act 1914 (c. 47), s.2—(*Hedges v. Preston* 80 L.T. 847).

(12) No assignment or transfer of book debts “valid” if unregistered: see *National Bank of Australasia v. Falkingham* [1902] A.C. 585, cited ASSIGNMENT.

(13) A conveyance or other assurance for a charitable purpose, not made with the statutory requirements, was “void” in the strict sense of that word as employed in Charitable Uses Act 1736 (c. 36), s.3 (*Doe d. Wellard v. Hawthorn* 2 B. & Ald. 96; *Doe d. Burdett v. Wrighte* *ibid.* 710; *Doe d. Preece v. Howells* 2 B. & Ald. 744; *Bunting v. Sargent* 13 Ch. D. 330); it was “void” “not merely as regards the trust but also as regards the legal estate given” (per Bayley J., 2 B. & Ald. 721; *Churcher v. Martin* sup.).

(14) A deed, though declared by statute to be void, may generally be bad in part and good in part; e.g. a personal covenant to pay is good though contained in a charge on a benefice which, under 13 Eliz., c. 20, was “utterly void” (*Mouys v. Leake* 8 T.R. 411; approved by Ellenborough C.J., *Kerrison v. Cole* 8 East, 234). So, of a similar covenant in a bill of sale transferring a ship, which under Shipping Act 1786 (c. 60), s.17, was “utterly null and void and to all intents and purposes” for not truly reciting certificate of registry (*Anon.*, Dwar. (2nd ed.), 638, 639). But though *Kerrison v. Cole* (sup.) and several other cases were cited in *Davies v. Rees* (sup.), yet it was there held that a bill of sale, void under Bills of Sale Act 1888 (c. 43), s.9, because not in the prescribed form, was void altogether even as regards its personal covenant to pay (see also *Re Townsend* sup.; *Bangor (Bishop) v. Parry* sup.; see *North Wales Produce and Supply Society* [1922] 2 Ch. 340; *Bradford Advance Co. v. Ayers* [1924] W.N. 152); but, as already stated, a bill of sale void under the Act is good as regards property not within the Act (*Re Burdett* and *Re Isaacson* sup.; see also *Re Yates* 38 Ch. D. 112). It seems a little difficult to reconcile *Davies v. Rees* with the anonymous case in Dwarries (sup.), or with *Phillpotts v. Phillpotts* (sup.), in which a conveyance “to multiply voices” and therefore “void and of none effect,” under the Parliamentary Election Act 1695 (c. 25), s.7, was nevertheless effective to pass the property as between the parties.

(15) Though an agreement to divest an occupier of his right to kill ground game

was “void” by Ground Game Act 1880 (c. 47), s.3, yet a reservation of “the exclusive right of sporting” was void only so far as it related to ground game (*Stanton v. Brown* [1900] 1 Q.B. 671).

(16) Though an infant’s contract for money lent, or for goods (other than necessities), or on account stated, was “absolutely void” by Infants Relief Act 1874 (c. 62), s.62), s.1, yet that did not enable him to recover back money paid by him in respect of ordinary goods which he had consumed or used (*Valentini v. Canali* 24 Q.B.D. 166).

(17) A lease for more than 3 years which (by the joint operation of the Statute of Frauds 1677 (c. 3), and Real Property Act 1845 (c. 106), s.3; see Law of Property Act 1925 (c. 20), s.54) is “void at law unless made by deed,” is valid as an agreement for a lease (*Parker v. Taswell* 27 L.J. Ch. 812); and, without any deed being made, the document will constitute the agreement between the parties as regards the occupancy, so that, on its termination, the tenant goes out without notice (*Tress v. Savage* 23 L.J.Q.B. 339), and each party is responsible on his own agreements contained in the document, and his liability thereunder may be enforced against him even after to so-called “term” of the document has expired (*Martin v. Smith* L.R. 9 Ex. 50, and other cases, cited TERM). As to the effect of Judicature Act 1873 (c. 66), s.25 (see Judicature Act 1925 (c. 49), s.44), on Real Property Act 1845 (c. 106), s.3, see *Walsh v. Lonsdale* 21 Ch. D. 9, on which see *Coatsworth v. Johnson* 55 L.J.Q.B. 220; *Manchester Brewery Co. v. Coombs* 82 L.T. 347, cited ASSIGNS.

(18) A thing “void” as against a specified person or class may be good as against everybody else (*Young v. Billiter* 8 H.L. Ca. 682; 30 L.J.Q.B. 153). Cp. ILLEGAL.

(19) A conveyance “void” under Fraudulent Conveyances Act 1571 (c. 5), as against creditors, was good as against the grantor himself and his representatives (*Hawes v. Leader* Cro. Jac. 270; *Packman’s Case* 6 Rep. 18 b). For the principles for holding a conveyance void under this statute, see *Spirett v. Willows* 34 L.J. Ch. 365; *Freeman v. Pope* 5 Ch. 538; *Ex p. Mercer* 17 Q.B.D. 290; *Re Lane-Fox* [1900] 2 Q.B. 508. See also *Re Holland* [1902] 2 Ch. 360, distinguished *Re Davies* [1921] 3 K.B. 628; Law of Property Act 1925 (c. 20), s.172.

(20) A judge’s order which, for want of being filed, was “void” under Debtor’s Act 1869 (c. 62), s.27, was only void as against the creditors of the person against whom it was made, and not as against the parties to the order (*Gowan v. Wright* 18 Q.B.D. 201); but the ruling in that case was not applicable to a statutory requirement of filing or registration of documents affecting whole classes of people under general laws relating to property, e.g. a document regulating community of goods between spouses under Law of Natal, No. 22 of 1863, ss.2 and 7 (*Taylor v. Sturrock* [1900] A.C. 225).

(21) A voluntary settlement “void” under Bankruptcy Act 1883 (c. 52), s.47(1)—see Bankruptcy Act 1914 (c. 59), s.42—is only so as against the donee and those voluntarily claiming under him; but is not void as against a purchaser for value in good faith (*Ex p. Brown, Re Vansittart* [1893] 2 Q.B. 377; *Re Brall, Ex p. Norton* [1893] 2 Q.B. 381; but see *Re Briggs and Spicer* [1891] 2 Ch. 127). Notwithstanding the conflict of those decisions, a title under a voluntary settlement, though not 10 years old, will be forced on a purchaser if bankruptcy has not supervened (*Re Carter and Kenderdine* [1897] 1 Ch. 776, on which see *per* Cozens-Hardy L.J., *Re Handman and Wilcox* [1902] 1 Ch. 599). See also CLAIMING UNDER. If a settlement is void under the section, that does not give the trustee in the donor’s bankruptcy priority over incumbrancers subsequent to the settlement (*Sanguinetti v. Stuckey’s Bank* [1865] 1 Ch. 176). See also *Re Farnham* [1895] 2 Ch. 799. See

SETTLEMENT; VALUABLE; VOLUNTARY PAYMENT; VOLUNTARY SETTLEMENT; UNCERTAINTY.

“Make void”: see AFFECT.

VOID SPACE OF GROUND. As to whether a railway is a “void space of ground” within a Rating Act, see *Arnell v. London & North Western Railway* 12 C.B. 697.

VOIDABLE. (1) “Voidable” was the concluding word of Infants Relief Act 1874 (c. 62), s.1, and in a case in which it somewhat came in question, Kekewich J., said that “voidable” means that a thing is valid until repudiated, not that it is invalid until confirmed (*Duncan v. Dixon* 44 Ch. D. 211).

(2) When an allotment of shares in a company is “voidable at the instance of the applicant” (Companies Act 1900 (c. 48), s.5(1))—see Companies Act 1985 (c. 6), s.85(1)), the allotment is avoided if the applicant gives notice of repudiation within the prescribed time, and where necessary, afterwards and with reasonable promptitude takes proceedings for setting aside the allotment: see *Re National Motor Mail Coach Co. (No. 2)* [1908] 2 Ch. 228; see also *Re Jubilee Cotton Mills* [1924] A.C. 598.

(3) “Voidable as a civil contract” (Deceased Wife’s Sister’s Marriage Act 1907 (c. 47), s.1): see *R. v. Dibdin* [1912] A.C. 533, cited EVIL LIVER.

(4) “Voidable title” (Sale of Goods Act 1893 (c. 71), s.23): see *Whitehorn v. Davison* [1911] 1 K.B. 463; *Heap v. Motorists’, etc., Agency* [1923] 1 K.B. 577; *Folkes v. King* [1923] 1 K.B. 282; *Robin and Rambler Coaches Ltd. v. Turner* [1947] 2 All E.R. 284; *Dennant v. Skinner and Collom* [1948] 2 K.B. 164.

See VOID.

VOIDANCE. See AVOIDANCE; LAPSE.

VOLENTI NON FIT INJURIA. (1) See *Baker v. James Bros. & Sons Ltd.* [1921] 2 K.B. 674; *Letang v. Ottawa Electric Railway Co.* [1926] A.C. 725.

(2) The maxim was held not to apply where a policeman on duty stopped a runaway horse in a crowded spot. Probably it does not apply in any case of voluntary assumption of such a risk (*Haynes v. Harwood* [1935] 1 K.B. 146).

(3) Ice hockey rink proprietors were not liable for injury to a spectator hit by a puck (*Murray v. Harringay Arena* [1951] 2 K.B. 529). But see *Payne v. Maple Leaf Gardens* [1949] 1 D.L.R. 369.

(4) The doctrine is not available, except in exceptional circumstances, as a defence to an action for negligence brought against a drunken driver by one who had voluntarily ridden with him in the car (*Dann v. Hamilton* [1939] 1 K.B. 509). See also *Joyce v. Kettle* [1948] Q.S.R. 139; but see *Roggenkamp v. Bennett* 80 C.L.R. 292.

(5) It did not apply where a motor cycle pillion passenger was injured and the motor cycle was to his knowledge travelling without lights (*Marshall v. Batchelor* 51 W.A.L.R. 68). Nor where a pupil in a dual control aeroplane crashed whilst making a simulated forced landing (*McWilliam v. Thunder Bay Flying Club* [1951] 1 D.L.R. 128).

(6) It does not apply in cases of breach of statutory duty (*Wheeler v. New Merton Board Mills Ltd.* [1933] 2 K.B. 669).

(7) It was held not to apply where a carter who drove a horse after protesting that it was unsafe was injured when the horse bolted (*Bowater v. Rowley Regis Corporation* [1944] K.B. 476).

VOLUME. (1) "Volume," in definition of book (Copyright Act 1842 (c. 45)—see now Copyright Act 1911 (c. 46), s.15(7)): see *Cambridge University v. Bryer* 16 East, 317; *British Museum v. Payne* 2 Y. & J. 166.

(2) A right to publish a book "in volume form" was infringed when the book was published complete in one issue of a weekly periodical (*Jonathan Cape v. Consolidated Press* [1954] 1 W.L.R. 1313).

VOLUNTARILY. (1) If a person, without duress of person or goods, does a thing, e.g. appears before a foreign tribunal, he does that thing "voluntarily" (*Vionet v. Barrett* 55 L.J.Q.B. 39), even though he protest against being called on to do it (*Bossiere v. Brockner* 6 T.L.R. 85). In that case, Cave J., said he was unable to supply the reasons for the decisions in *Davies v. Price* (34 L.J.Q.B. 8) and *Ringwood v. Lowndes* (33 L.J.C.P. 337), and declined to extend the application of those decisions.

(2) "Voluntarily" (Customs and Inland Revenue Act 1881 (c. 12), s.38(2)(b)) "is not used in the sense of 'without consideration,' but in its ordinary sense of 'freely,' 'without compulsion,' and 'not under any obligation' " (*A.-G. v. Ellis* [1895] 2 Q.B. 466).

(3) As to a bequest until the legatee "voluntarily" ceases to make a named house her home, see *Re Wilkinson* [1926] 1 Ch. 842.

See VOLUNTARY CONTRIBUTIONS; VOLUNTARY DISPOSITION; VOLUNTARY PAYMENT.

VOLUNTARY. See CONSENT.

Stat. Def., National Health Service Act 1946 (c. 81), s.79(1).

VOLUNTARY ASSOCIATION. See hereon *Smith v. Kerr* [1900] 2 Ch. 511, cited CHARITY, and authorities therein cited; *Brown v. Dale* 9 Ch. D. 78.

Stat. Def., Employment and Training Act 1948 (c. 46), s.18(1).

VOLUNTARY CONTRIBUTIONS. (1) "Voluntary contributions" and "voluntary subscriptions" are synonyms (Tudor Char. Trusts).

(2) "Voluntary contributions" may mean, (1) that the contributions are not compulsory; or (2) that they are without consideration (*per Halsbury C.*, *Savoy v. Art Union* [1896] A.C. 305).

(3) "Voluntary contributions" (Scientific Societies Act 1843 (c. 36), s.1, see General Rate Act 1967 (c. 9), s.40) had to be a "gift made from disinterested motives for the benefit of others" (*per Campbell C.J.*, *Russell Institution v. St. Giles and St. George, Bloomsbury* 23 L.J.M.C. 65), and a society, to be exempt from rates under that section, had to receive such contributions as gratuitous offerings, without returning to the contributors any direct advantage; therefore, the Art Union of London was not such a society (*Savoy v. Art Union* [1896] A.C. 296). Grants from public funds were not "voluntary contributions" (*British Launderers' Research Association v. Hendon Rating Authority* [1949] 1 K.B. 462; *Battersea Borough Council v. British Iron and Steel Research Association* [1949] 1 K.B. 434). A society in which members have substantial benefits for their subscriptions is not supported by voluntary contributions within the Act (*Institution of Mechanical Engineers v. Cane* [1961] A.C. 696). "Voluntary contributions" under this section meant contributions which were gratuitous whether or not the contributors were under an obligation to make them. They did not include government grants or income from endowments, but did include gratuitous subscriptions, gifts, legacies

and payments made by trustees of outside trusts (*Cane v. Royal College of Music* [1961] 2 Q.B. 89). See SCIENCE.

(4) Institution, etc., “wholly maintained by voluntary contributions” (Charitable Trusts Act (1853) (c. 137), s.62, see Charities Act 1960 (c. 58)), was one which had no invested endowment yielding an income for its support, but was dependent upon the gifts of the benevolent, whether recurrent or occasional and whether *inter vivos* or by will (*Re Clergy Orphan Corporation* [1894] 3 Ch. 150). A hospital which was supported by a single voluntary gift out of which it was founded is not “wholly maintained by voluntary contributions” within the meaning of the section (*Re Richard Murray Hospital* [1914] 2 Ch. 713).

(5) “Voluntary contributions” under this section was not confined to annual subscriptions (*per Romilly M.R.*, *Corporation for Relief of Widows and Children of the Clergy v. Sutton* 29 L.J. Ch. 393); the phrase was used in a popular sense, and denoted recurring gifts, repeated annually or otherwise with more or less regularity. Donations or bequests (which would be included, as well as subscriptions, in the general term “contributions”) were dealt with in the following sentence (*Re Clergy Orphan Corporation* [1894] 3 Ch. 151). See further *Re Wilson* 19 Bea. 594; *Tudor Char. Trusts* (5th ed.), 542, 544. See *Re Society for Training Teachers of the Deaf* [1907] 2 Ch. 486; *A.-G. v. Mathieson* [1907] 2 Ch. 383. See also *Orphan Working School and Alexandra Orphanage’s Contract* [1912] 2 Ch. 167; *Re Harding and Welsh Calvinistic Methodist Trustees* 92 L.T. 641.

(6) Exemption from tax, on “property acquired by or with funds voluntarily contributed” (Customs and Inland Revenue Act 1885 (c. 51), s.11(6)) did not extend, *e.g.* to the New University Club (*Re New University Club* 18 Ch. D. 720, following *Society of Writers to the Signet v. Inland Revenue Commissioners* 14 Sess. Ca. (4th Series) 34).

(7) Gift over of a fund (the income of which was to be towards the support of a school) on the school ceasing to be supported by “voluntary subscriptions”: see *Re Beard* [1904] 1 Ch. 270, where it was held that the school managers’ personal obligation to their bank to repay loans for carrying on the school, amounted to such voluntary subscriptions. See also as to such a gift over, *Re Blunt* [1904] 2 Ch. 767, discussed and distinguished in *Re Peel* [1921] 2 Ch. 218.

VOLUNTARY COURTESY. “A meer voluntary courtesie will not have a consideration to uphold an assumpsit. But if that courtesie were removed by a suit or request of the party that gives the assumpsit, it will bind, for the promise, though it follows, yet it is not naked, but couples itself with the suit before, and the merits of the party procured by that suit” (*Lampleigh v. Braithwait* Hob. 106; 1 Sm. L.C. (13th ed.), 148).

VOLUNTARY DISPOSITION. (1) “Voluntary disposition” (Customs and Inland Revenue Act 1881 (c. 12), s.38(2)(a)): see *A.-G. v. Jacobs-Smith* [1895] 2 Q.B. 341.

(2) (a) “A voluntary disposition is chargeable with the like stamp duty as if it were a conveyance on sale” (Finance (1909–10) Act 1910 (c. 8), s.74(1)); such duty had to be assessed by the Inland Revenue Commissioners (subs. (2)), and its adequacy could not be inquired into by a subsequent purchaser: see *Re Weir and Pitt* 55 S.J. 536.

(b) “Any conveyance . . . operating as a voluntary disposition *inter vivos*,” in Finance (1909–10) Act 1910, s.74(1), applied to settlements of real estate: see *Baker v. Inland Revenue Commissioners* [1924] A.C. 270; see also *Stanyforth v.*

Inland Revenue Commissioners [1930] A.C. 339; *Associated British Engineering Co. v. Inland Revenue Commissioners* [1941] K.B. 15 (distribution in specie to company's shareholders liable to *ad valorem* stamp duty); *Fuller v. Inland Revenue Commissioners* [1950] 2 All E.R. 976.

See CONVEYANCE; DISPOSITION; VOLUNTARILY; VOLUNTARY SETTLEMENT; VOLUNTEER.

VOLUNTARY LIQUIDATION. See LIQUIDATION.

VOLUNTARY PAYMENT. "A voluntary payment is a payment simply by the act and will of the party making it; if there is anything to interfere with or control this will, then it is not a voluntary payment. It is said that a payment is voluntary when made as a matter of favour; but it may, nevertheless, not be a voluntary payment. Suppose a person who has done another many favours comes to him and asks in return a favour for a third party and the person asked says, "It is against my will, yet, as you ask the favour, I will grant it"; would that be a voluntary act? It would in one sense, because he has the power to refuse it; but still there is an influence, for he grants the favour upon the solicitation of a person who has a right to ask it" (*per* Alderson B., *Strachan v. Barton* 11 Ex. 650). That definition was upon what would be a VOID voluntary payment in bankruptcy, on which see *Ex p. Hill, Re Bird* 23 Ch. D. 695; VIEW. Cp. VOLUNTARILY.

VOLUNTARY SCHOOL. The Royal Victoria Patriotic Asylum at Wandsworth was not "land or buildings used exclusively or mainly for the purposes of the schoolrooms, offices, or playground of a voluntary school" within Voluntary Schools Act 1897 (c. 5), s.3 (*Patriotic Fund Commissioners v. Wandsworth* 88 L.T. 865). See hereon *per* Smith M.R., *R. v. Cockerton* [1901] 1 K.B. 734, 735.

Stat. Def., Voluntary Schools Act 1897 (c. 5), s.4; Education Act 1944 (c. 31), s.9.

VOLUNTARY SETTLEMENT. "Past or future voluntary settlement" (Customs and Inland Revenue Act 1881 (c. 12), s.38(2)(c), explained by Customs and Inland Revenue Act 1889 (c. 7), s.11): see *A.-G. v. Chapman* [1891] 2 Q.B. 526; *A.-G. v. Gosling* [1892] 1 Q.B. 545; *A.-G. v. Wendt* 65 L.J.Q.B. 54.

See SETTLEMENT; VOID; VOLUNTARILY; VOLUNTARY DISPOSITION.

VOLUNTARY TRANSFER. (1) As to what was a "voluntary transfer or delivery" of property within Insolvent Debtors (England) Act 1826 (c. 57), s.32, see *Wainwright v. Clement* 8 L.J. Ex. 25. See FRAUDULENT ASSURANCE.

(2) "Voluntary" transfer: see *A.-G. v. Ellis* [1895] 2 Q.B. 466, cited VOLUNTARILY.

VOLUNTARY WASTE. See WASTE.

VOLUNTARY WINDING-UP. See WINDING-UP.

VOLUNTEER. (1) (a) Every one who, under any disposition, takes a benefit for which neither himself nor any one on his behalf gives any consideration, is a volunteer, *e.g.* the consideration of marriage, in a marriage settlement, extends only to the husband and wife and the issue of their marriage (*A.-G. v. Jacobs-Smith* [1895] 2 Q.B. 341, cited VOLUNTARY DISPOSITION; explaining *Newstead v. Searles* 1 Atk. 265; see also *De Mestre v. West* [1891] A.C. 264).

(b) So, every one in whose favour an appointment is made under a general power, and to whom or in whose favour the appointor is under no obligation to appoint, is a "volunteer." "The interest given by a settlement to, e.g. the children in default of appointment, is one thing; the interest which they take by virtue of the appointment is another and a very different interest; and though it is true that they are not volunteers with respect to the former, yet that interest is destroyed by the execution of the power and the interest which they take under the appointment they owe to the voluntary act and bounty of the appointor; and in respect of this latter interest they are mere volunteers, just as much as any strangers would be in whose favour the donee of the power might have thought fit to exercise it" (*per* *Kindersley V.-C.*, *Vaughan v. Vanderstegen* 2 W.R. 295). See hereon *Re Roper* 39 Ch. D. 482; *Re De Burgh Lawson* 41 Ch. D. 568; *Re Parkin* [1892] 3 Ch. 521.

(2) "Volunteer" (Customs and Inland Revenue Act 1889 (c. 7), s.11): see *A.-G. v. Jacobs-Smith* [1895] 2 Q.B. 341; VOLUNTARY SETTLEMENT.

See DONATIO MORTIS CAUSA; GOOD; PURCHASE; VIEW; VOID.

VOTE. (1) "There are two well-known methods of voting, (1) by show of hands, and (2) by a poll; and the essence of the former method is that the hands are held up and counted by decision of the eye" (*per* *Chitty J.*, *Ernest v. Loma Co.* [1896] 2 Ch. 572). Therefore, though the voting at a company's meeting is to be "either personally or by proxy," e.g. Companies Act 1862 (c. 89), Table A, Art. 48 (see Companies Act 1985 (c. 6), s.8 and Companies (Alteration of Table A, etc.) Regulations 1984 (No. 1717)), yet proxies ought not to be counted on the show of hands (*ibid.* [1897] 1 Ch. 1, overruling *Re Bidwell* [1893] 1 Ch. 603; see also *Re Horsbury Bridge Co.* 11 Ch. D. 109; *Re Caloric Co.* 52 L.T. 846). See also CONCLUSIVE EVIDENCE.

(2) "Personally or by proxy" does not avoid the necessity of some person being present to vote, *i.e.* either the shareholder must be present, or, if absent, his proxy must be present; therefore, voting papers are inadmissible, even on taking a poll, though that mode be directed by a chairman who, by the articles, has the power to direct the manner in which the poll is to be taken (*McMillan v. Le Roi Mining Co.* [1906] 1 Ch. 331; *Isaacs v. Chapman* [1916] W.N. 28). See hereon *R. v. Dover* 72 L.J.K.B. 210, cited DEMAND, where *Dasling J.*, said, "I should have been prepared to hold, had it been necessary, that a demand for a poll cannot be withdrawn after it has been accepted by a statement that a poll will be held, and the meeting has come to an end" (*Siemens v. Burns* [1918] 2 Ch. 324).

(3) In a company for private gain, the right to vote "is a right of property" (*per* *Jessel M.R.*, in *Pender v. Lushington* 6 Ch. D. 70, cited MEMBER, adopted by *Buckley L.J.*, and *Cozens-Hardy M.R.*, in *Osborne v. Amalgamated Society of Railway Servants* 80 L.J. Ch. 320). See Companies Act 1948 (c. 38), Sched. 1.

(4) As to ballot meaning "lot" and not "secret vote," see *Eyre v. Milton Proprietary* [1936] Ch. 244.

Stat. Def., Ballot Act 1872 (c. 33), ss.15, 20; Representation of the People Act 1949 (12, 13 & 14 Geo. 6, c. 68), s.171(1).

See ENTITLED TO VOTE; CASTING VOTE.

VOTER. Stat. Def., Representation of the People Act 1983 (c. 2), s.202.

See COUNTY; ELECTOR; LOCAL GOVERNMENT ELECTORS; OCCUPATION VOTER; OWNERSHIP; PARLIAMENTARY; PAROCHIAL ELECTOR.

VOUCH TO WARRANTY. See Co. Litt. 101 b, 102 a.

VOUCHER. (Local Government Act 1933 (c. 51), s.24) does not include an application for a loan (*R. v. Monmouthshire County Council, Ex p. Smith* 153 L.T. 338). Stat. Def., Finance Act 1982 (c. 39), s.44.

VOYAGE. (1) A voyage is a transit at sea from one terminus to another (*Glaholm v. Hays* 10 L.J.C.P. 98; *Valente v. Gibbs* 6 C.B.N.S. 270). "The word 'voyage,' standing alone, has an extensive meaning; it means a passing by water from one place or port to another place or port" (*per Byles J., Barker v. McAndrew* 18 C.B.N.S. 759). But see *per Coleridge C.J., R. v. Southport*, nom. *Southport v. Morris* [1893] 1 Q.B. 359, cited SHIP. See LIBERTY TO CALL. Cp. PASSAGE.

(2) (a) "Voyage" "is French in origin, and its original meaning is 'to move afar,' or 'go abroad,' as applied to persons or things leaving the place to which they belonged. The word has inherent in it the sense of movement, and I have no doubt was originally confined to a passing from one given spot to one other given spot; and that was the meaning attached to the word when it was adopted into the English language. But the meaning of the word has undoubtedly changed, and especially as applicable to ships. I believe the more modern meaning of the word is, so far as an English ship is concerned, the passing of that ship from home to a given port and back again to home, and that this is the meaning which the framers of the Merchant Shipping Act 1894 (c. 60), had in view when the wording of s.115(5) was considered: 'The agreements may be made for a voyage, or, if the voyages of the ship average less than 6 months in duration, may be made to extend over two or more voyages.' I read this to contemplate such voyages as those of transatlantic, or Peninsular and Oriental, liners; or even cross-Channel steamers, which leave their home port, go abroad, and return home—each thus completing a voyage.

(b) "But it is not inconsistent with this reading of the word 'voyage' that the vessel should, after leaving home, go to more than one port abroad before returning home; on the contrary, it would seem to be consistent that, both on the passage out and the passage back, the British vessel should go to more than one foreign country, when she should unload or load and trade, before finally loading for her return home. We speak of 'a voyage round the world,' which infers stopping at many places in transit; but it is all one voyage up to and until the return of the ship home to this country.

(c) "The further question arises: given that the voyage ends within these home limits, at what place within these home limits does it end? The Merchant Shipping Acts, from 1729 downwards, do not, in terms, define 'the end of a voyage' " (*per Bargrave Deane J., The Scarsdale* 74 L.J.P.D. & A. 135). The actual decision in that case was reversed ([1906] P. 103), but Williams L.J., said he entirely concurred in the foregoing definition of "voyage"; in that case the Court of Appeal held that articles by the seamen for a "voyage, not exceeding one year's duration," within stated limits, "and to end at such port in the United Kingdom or continent of Europe within home-trading limits as may be required by the master," were not contrary to Merchant Shipping Act 1894, s.114(2)(a); that the voyage to be ended was the voyage of the ship, and not of the cargo; and that, therefore, the seaman was not entitled to his discharge and payment of his wages at Southampton (where the ship had discharged her return-home cargo), that being contrary to the master's statement that the agreement was not then at an end and contrary to his request to the seaman to go on with the ship to Cardiff; this decision was affirmed in House of Lords [1907] A.C. 373. See also *Haylett v. Thompson* 80 L.J.K.B. 267. See also, as to what is the "end of the voyage," *R. v. Abrahams* [1904] 2 K.B. 859, cited ARRIVE; *Re Istok S.S. and Drughorn* 7 Com. Ca. 190.

(3) As to when a voyage commences and is completed, see *Dahl v. Nelson* 12 Ch. D. 568; DURING; NAVIGATION; *Re Pyman and Dreyfus* 24 Q.B.D. 152.

(4) A voyage policy is one which covers the risk of a particular voyage; see hereon *Gambles v. Ocean Marine Insurance* 1 Ex. D. 8, 141. Cp. TIME POLICY. See also Marine Insurance Act 1906 (c. 61), s.25(1), stated POLICY.

(5) "On a voyage": see *Eagle, Star & British Dominions Insurance Co. Ltd. v. Reiner* 43 T.L.R. 259.

(6) "A voyage royall, is not onely, when the king himselfe goeth to warre, as Littleton here (s.95) saith, but also when his lieutenant or deputy of his lieutenant goeth. . . . There is also another kind of voyage royall, viz. when one goeth with the king's daughter beyond sea to be married etc." (Co. Litt. 69 b). There is therefore a "voyage royall of warre, and a voyage royall of peace and amity" (*ibid.*). See ESCUAGE.

"Seaworthiness . . . for the voyage": see SEAWORTHY.

"Change of voyage": see CHANGE; Marine Insurance Act 1906 (c. 41), s.45.

See NEAR THERETO AS SHE MAY SAFELY GET; NEGLIGENCE OR DEFAULT OF MASTER OR MARINERS; COLONIAL; FIRST VOYAGE.

"Voyage" (fishing). Stat. Def., Merchant Shipping Act 1894 (c. 60), s.370.

"Voyage in home waters." Stat. Def., Customs and Excise Act 1952 (c. 44), s.204(4)(c).

VOYAGER. See PASSENGER.

VULNERABLE. "Vulnerable as a result of . . . mental illness" (Housing (Homeless Persons) Act 1977 (c. 48), s.2(1)(c)). In declaring that a man with brain damage as a result of an accident was "vulnerable" within the meaning of this section, the Court of Appeal stressed the importance of drawing a distinction between this case and those solely caused by the problems of drink which would normally come within the provisions of this section (*R. v. Waveney District Council, ex p. Bowers* [1982] 3 W.L.R. 661).

W

WAFER. Wafer bread is not “bread” in the Rubric to the office for Holy Communion (*Hebbert v. Purchas* L.R. 3 P.C. 605, cited **ORNAMENT**; *Ridsdale v. Clifton* 2 P.D. 276, cited **IT SHALL SUFFICE**).

WAGE. (1) “ ‘Wage’ is the giving security for the performing of any thing; as to wage law, and to wage deliverance” (*Termes de la Ley*). See **PLEDGE**.

(2) To wage battle, or wager of battel: see Jacob, *Battel*; 3 Bl. Com. 337–341; for the form of it, 3 Bl. Com. App. iv; abolished by the Appeal of Murder, etc., Act 1819 (c. 46), the last wager of battel being by Abraham Thornton, November, 1817, on his second trial for the murder of Mary Ashford. Cp. trial by battle, under **BATTLE**.

(3) To wage deliverance: see *Termes de la Ley*, *Gager de deliverance*.

(4) To wage law: see *Termes de la Ley*, *Law*; Jacob, *Wager of Law*; Co. Litt. 294 b; 3 Bl. Com. 341–343. Abolished by Civil Procedure Act 1833 (c. 42), s.13.

WAGER. What is a wager?: see this question discussed 40 J.P. 227.

See **BET**; **GAMING CONTRACT**; **SUBSCRIPTION OR CONTRIBUTION**.

WAGERING CONTRACT. “Contracts . . . by way of . . . wagering” (*Gaming and Wagering Act* 1845 (c. 109), s.18). In order to constitute such a contract it is essential that each party might either win or lose (*Tote Investors v. Smoker* [1968] 1 Q.B. 509).

See **GAMING CONTRACT**; **TIME BARGAIN**.

WAGERING POLICY. Is otherwise called an honour, or P.P.I., policy.

WAGES. (1) (a) “Though this word might be said to include payment for any services, yet, in general, the word ‘salary’ is used for payment of services of a higher class, and ‘wages’ is confined to the earnings of labourers and artisans” (*per* Grove J., *Gordon v. Jennings* 51 L.J.Q.B. 417. See hereon *per* Parke B., *Riley v. Warden* 2 Ex. 59; *per* Bramwell B., *Sleeman v. Barrett* 33 L.J. Ex. 153; and in *Ingram v. Barnes* 26 L.J.Q.B. 322). In that case, Bramwell B., said, “Whatever definition one gives to the term ‘wages,’ a portion of what the plaintiff here gets is ‘profits,’ made and makeable by the employment of other people under him. If a portion is that, the whole is not wages”; see also *per* Cockburn C.J., same case. It would therefore seem that “wages” are the personal earnings of labourers and artisans.

(b) *Ingram v. Barnes* *sup.*, *Riley v. Warden* *sup.*, and *Sleeman v. Barrett* *sup.*, were cases on the Truck Act 1896 (c. 44); on which Act it was held, in Ireland, that what was called a “BONUS,” and was a sum per week additional to stated wages and was paid only when the work-person had been punctual and regular in attendance, was not “wages” within the Truck Act, which (by its s.25) defines that word as “Any money or other thing had, or contracted to be paid, delivered or given, as a recompense, reward, or remuneration, for any labour done or to be done, whether within a certain time or to a certain amount, or for a time or an amount uncertain,” nor was it a sum “contracted to be paid by the employer to the workman,” within

s.1(1) (*Deane v. Wilson* [1906] 2 Ir. R. 405; but see that case adversely criticised, 50 S.J. 609). Cp. *The Elmville* inf.

(c) Has been held to include a war bonus and to exclude overtime, Sunday pay and other casual payments (*Picken v. Lord Balfour of Burleigh* [1945] Ch. 90). But not include stamps stuck on to an employee's card signifying the amount of holiday pay to which the employee is entitled (*London County Council v. Henry Boot & Son* [1959] 1 W.L.R. 1069).

(2) "Wages or salary" (Bankruptcy Act 1888 (c. 62): see *Re Klein* 22 T.L.R. 664.

(3) In Merchant Shipping Act 1894 (c. 60), s. 742, "'wages' includes emoluments." Victualling money or allowance is "wages" within the definition in Merchant Shipping Act 1894 (*The Tergeste* [1903] P. 26); and so is a bonus which a master has earned from the owners under an arrangement with them (*The Elmville* [1904] P. 422). Cp. *Deane v. Wilson* sup.; and a war bonus paid to a sailor forms part of his "emoluments," and consequently of his "wages" within the definition contained in s.742 of the Act: see *Shelford v. Mosey* [1917] 1 K.B. 154. See also *Skailes v. Blue Anchor Line* [1911] 1 K.B. 360, cited REMUNERATION; TIPS; *The Ambatielos* [1923] P. 68; *Thompson v. Nelson* [1913] 2 K.B. 523.

(4) "Wages" (Administration of Justice Act 1956) (c. 46), s.1(1)(o)) do not include insurance contributions due from a shipowner in respect of the seamen he employs (*The Acrux* [1965] P. 391). But do include the employer's agreed contributions to a pension fund (*The Halcyon Skies* [1976] 2 W.L.R. 514).

(5) "Wages forfeited for desertion" (Merchant Shipping Act 1894 (c. 60), s.232) are wages due after all proper deductions have been made (*The Parkdale* [1897] P. 53, cited SLOPS).

(6) Claim for "wages" (Jurisdiction Act 1868 (c. 71), s.3(2) included a claim for damages for wrongful dismissal (*The Blessing* 3 P.D. 35). See "Maritime Lien," under LIEN; SEAMAN.

(7) Forfeiture of all "wages due": see *Walsh v. Walley* L.R. 9 Q.B. 367.

(8) The month's wages payable on dismissing a domestic servant without notice, are the money wages; board wages are not included (*Gordon v. Potter* 1 F. & F. 644).

(9) Bequest of so much wages: see SERVANT; *Re Ravensworth* [1905] 2 Ch. 1, distinguished *Re Sheffield* 80 L.T. 313, cited YEAR.

(10) A workman obtaining compensation, under Workmen's Compensation Act 1897 (c. 37), was estopped from claiming wages for the period over which the compensation extended (*Elliott v. Liggins* [1902] 2 K.B. 94, cited COMPENSATION). See EARNINGS.

(11) Tips are not "wages" for the purposes of s.8 of the Employment Protection (Consolidation) Act 1978 (c. 44) (*Cofone v. Spaghetti House* [1980] I.C.R. 155).

Stat. Def., Payment of Wages Act 1960 (c. 37), s.7(1).

See INCOME; PAYMENT; PERSONAL LABOUR; SALARY; TRUCK ACT.

WAGGON. See CART; STAGE WAGGON.

WAGGON ROAD. See CART ROAD.

WAIF. (1) "'Waife' is when a theefe hath feloniously stollen goods, and being neerly followed with hue and cry, or else overcharged with the burden or trouble of the goods, for his ease sake and more speedy travailing, without hue and cry, flyeth away, and leaveth the goods or any part of them behinde him. etc., then the Kings officer, or the reeve or baylife to the lord of the mannor (within whose jurisdiction

or circuit they were left) that by prescription, or grant from the King, hath the franchise of waife, may seise the goods so waived to their lords use, who may keepe them as his owne proper goods, except that the owner come with FRESH SUIT after the felon, and sue an appeale, or give in evidence against him at his arraignment upon the indictment, and he bee attainted thereof, etc. In which cases the first owner shall have restitution of his goods so stollen and waived" (Termes de la Ley). See also *Foxley's Case* 5 Rep. 109 l.

(2) " 'Waifs,' *bona waviata*, are goods stolen, and waived or thrown away by the thief in his flight, for fear of being apprehended" (1 Bl. Com. 296).

See also FUGITIVE GOODS; Cowel; Jacob.

Cp. WAIVE.

WAINABLE. Terra wainabilis: see TERRA.

WAINAGE. Amerciament of a villein "salvo wainagio suo" (Magna Carta, c. 14), *i.e.* his "team and instruments of husbandry" (4 Bl. Com. 379). " 'Wainagium' is the contenment or countenance of the villein, wherewith he was to doe villein service, as to carry the dung of the lord out of the scite of the mannor unto the lords land and casting it upon the same, and the like; and it was great reason to save his wainage, for otherwise the miserable creature was to carry it on his back" (2 Inst. 28).

WAITER. (1) See LANDING WAITER; *Whiteley v. Burns* [1908] 1 K.B. 705, cited MALE SERVANT.

(2) Waiters' tips: see *Penn v. Spiers & Pond* [1908] 1 K.B. 766, cited EARNINGS; TIPS; TRONC.

WAITH. See WRAK.

WAITING YOUR REPLY. *Semble*, these words at the end of a letter containing a distinct contractual offer, do not make the offer a mere proposal which the writer is at liberty to retract on receiving a reply; therefore, if the receiver of the letter accepts the offer (though only orally) the writer of it will be bound (*Watts v. Ainsworth* 31 L.J. Ex. 448).

WAIVE. A "waive" was a woman that was outlawed; "and shee is called 'waive,' as left out or forsaken of the law, and not an outlaw as a man is; for women are not sworne in leetes to the King, nor to the law, as men are, who therefore are within the law, whereas women are not, and for that cause they cannot be said outlawed, in so much as they never were within it" (Termes de la Ley; Cowel).

Cp. WAIF.

WAIVER. (1) A waiver is "the passing by of a thing, or a declining or refusal to accept it" (Jacob), *i.e.* an abandonment. Cp. renunciation; "Surrender by act or operation of law," under SURRENDER; STANDING BY.

(2) Waiver is express, or implied; express, when the person entitled to anything expressly and in terms gives it up, in which case it nearly resembles a release (see *Stackhouse v. Barnston* 10 Ves. 466); implied, when the person entitled to anything does or acquiesces (see ACQUIESCENCE) in something else which is inconsistent with that to which he is so entitled—"Delay, of itself, does not constitute waiver, but it

may be such as to amount to evidence of waiver" (*per* Bowen L.J., *Selwyn v. Garfit* 38 Ch. D. 284).

(3) In the case of bills of exchange and promissory notes, waiver is called renunciation (Bills of Exchange Act 1882 (c. 61), s.62: see s.16(2), *ibid.*; waiver of notice of dishonour, see s.50(2), *ibid.*; waiver of presentment, see s.46(2), *ibid.*; waiver of protest, see s.51(9), *ibid.*

(4) In companies, the waiver clause in a prospectus was that in which the rights (of applicants for shares) under Companies Act 1867 (c. 131), s.38 (see Companies Act 1985 (c. 6), s.57), were waived; see hereon *Greenwood v. Leather Shod Wheel Co.* [1900] 1 Ch. 421. See also *Cackett v. Keswick* [1902] Ch. 456; *Watts v. Bucknall* [1903] 1 Ch. 766; *Calthorpe v. Trechmann* [1906] A.C. 24; cited KNOWINGLY. As to waiver of notice required in Companies Act 1908 (c. 69), s.69(1); see *Express Engineering Works* [1900] 1 Ch. 466; *Re Oxted Motor Co.* [1921] 3 K.B. 32.

(5) Of covenants and conditions: see *Gibson v. Doey*, or *Doeg*, 27 L.J. Ex. 37; *Re Summerson* 69 L.J. Ch. 57, n.; *Hepworth v. Pickles* [1900] 1 Ch. 108; *Samuel v. Dumas* [1924] A.C. 431.

(6) Of crown escheats: see Intestates' Estates Act 1884 (c. 71), s.6.

(7) As between landlord and tenant, a forfeiture is waived, *e.g.* by acceptance of rent becoming due after knowledge of the facts giving rise to the forfeiture (*Goodright d. Walter v. Davids Cowp.* 803; *Arnsby v. Woodward* 6 B. & C. 519; *Whitchcot v. Fox Cro. Jac.* 398). See also *Davenport v. Smith* [1921] 2 Ch. 370, and cases there followed. Even though the lease provides that no waiver by the lessor shall take effect, unless it is in writing (*R. v. Poulson* [1921] A.C. 271). See *Atkin v. Rose* 92 L.J. Ch. 209. See also WHENEVER; a notice to quit, given by a landlord, is waived, *e.g.* by acceptance of rent, or (if given by a tenant) by payment of rent, for a period after the expiry of the notice (*Keith v. National Telephone Co.* [1894] 2 Ch. 147). Where a tenant of premises to which the Increase of Rent, etc. (Restrictions) Act 1920 (c. 17), applied held over after notice to quit, acceptance of rent by the landlord was not a waiver: see *Davies v. Bristow* [1920] 3 K.L. 428, followed in *Town Properties Development Co. Ltd. v. Winter* 37 T.L.R. 979.

(8) "Waiver" (Finance Act 1963 (c. 25), s.22(1)(4), now Income and Corporation Taxes Act 1970 (c. 10), s.80(1)(4)). A sum paid by a tenant to his landlord to enable the tenant to keep a valuable lease liable to be forfeited for breach of covenants is a sum paid for a "waiver" of terms of a lease within the meaning of these sections (*Banning v. Wright* [1972] 1 W.L.R. 972).

(9) As to mortgages, liens, and sureties; waiver of mortgagor's rights prior to the exercise by mortgagee of power of sale: see *Selwyn v. Garfit* 38 Ch. D. 273; *Re Thompson and Holt* 44 Ch. D. 492.

(10) As to tender: see *Douglas v. Patrick* 3 T.R. 683.

(11) As to tort, waiver of by claiming proceeds as a debt: see *Brewer v. Sparrow* 7 B. & C. 310; *Lythgoe v. Vernon* 29 L.J. Ex. 164; *Burn v. Morris* 3 L.J. Ex. 193; *Smith v. Baker* L.R. 8 C.P. 350; *Valpy v. Sanders* 5 C.B. 886; all of which cases were referred to in *Rice v. Reed* [1900] 1 Q.B. 54.

(12) There is no principle under which a plaintiff who has alternative causes of action in respect of the same wrong, one in contract and one in tort, "waives the tort" merely by bringing an action in contract. An action in tort is prevented by nothing less than judgment in the action in contract (*United Australia Ltd. v. Barclays Bank Ltd.* [1941] A.C. 1).

(13) The expression waiver is sometimes used in the sense of election, as where a person decides between two mutually exclusive rights (*e.g.* claiming in assumpsit and waiving a tort). It is also used where a party expressly or impliedly gives up a

right to enforce a condition or rely on a right to rescind a contract, or prevents performance, or announces that he will refuse performance or loses an equitable right by laches (*Smyth (Ross T.) & Co. v. Bailey, Son & Co.* 162 L.T. 102).

(14) As to trusts, waiver of breach of trust by long delay so that a claim founded thereon becomes a stale demand: see *Re Cross* 20 Ch. D. 109; see also Lewin (15th ed.), 768, waiver of trust for sale by the election of the beneficiaries to take the subject of the gift in specie; see Lewin (15th ed.), 591.

WAKE. A “wake” is a concourse for purposes of pleasure held usually on a feast day following after a vigil connected with the local patron saint or some religious purpose (*Wyld v. Silver* [1963] Ch. 243). Cp. FAIR.

WALES. Stat. Def., Interpretation Act 1978 (c. 30), Sched. 1.

WALK. (1) A conviction of a woman that she was guilty of “walking with a member” of Cambridge University is bad, because the phrase does not connote that she was walking with him for an immoral purpose, nor that she was “suspected of evil” within the words of the charter of the University (*Ex p. Daisy Hopkins* 61 L.J.Q.B. 240). Cp. NIGHT-WALKER; STREET WALKER.

(2) A dog injured so that he can only go on three legs does not “walk,” within a policy of insurance; in such a connection “walking” means locomotion in the usual way, on four legs” (*Jacob v. Gaviller* 87 L.T. 26, cited MORTALITY).

(3) (a) “Walking possession”: see *A. W. Ltd. v. Cooper & Hall Ltd.* [1925] 2 K.B. 816; *National Commercial Bank of Scotland v. Arcam Demolition and Construction* [1966] 2 Q.B. 593.

(b) Walking possession means that a bailiff is not really in possession but, at the most, in constructive possession of the goods distrained (*Day v. Davies* [1938] 2 K.B. 74, 78).

“Public walks and pleasure grounds”: see PLEASURE.

Walk in a forest: see FOREST.

See also POSSESSION.

WALKWAY. Stat. Def., Highways Act 1980 (c. 66), s.35.

WALL. (1) The ordinary sense of the “walls” of a building contemplates foundations and a roof (*per Cave J., Slaughter v. Sunderland* 60 L.J.M.C. 93).

(2) A wall “is, at any rate, something which will stand by itself” (*per Russell C.J., Badley v. Cuckfield* 64 L.J.Q.B. 571), in which it was held that an outer part of a new building constructed of thin sheets of galvanised iron next to which was a layer of felt with a matchboard lining on the inner side, was not a “wall” of “hard and INCOMBUSTIBLE materials” within a bye-law relating to new buildings.

(3) House “with the walls belonging thereto”: see *Fox v. Clarke* L.R. 9 Q.B. 565.

(4) Although windows in the outer walls of a building may, in certain contexts and for certain purposes, be regarded as part of the walls, they cannot be so regarded for the purposes of a covenant in a lease whereby the landlord is responsible for keeping the main walls in repair (*Holiday Fellowship v. Hereford* [1959] 1 W.L.R. 211). But a wall may be a “building” and a window may be a “building”: see cases cited BUILDING.

Stat. Def., Highways Act 1980 (c. 66), s.79(17).

See BANK; CROSS; DEAD WALL; EXTERNAL WALL; FRONT MAIN WALL; INCLOSING WALLS; PARTY-WALL; RETAIN; SEA WALL; GUARD; WING WALL.

WALTHAM. See **BLACK ACT**.

WANDER. Animals “wandering”: see **LOOSE**; **LYING ABOUT**; **STRAY**.

“Wandering in the public streets” (Vagrancy Act 1824 (c. 83), s.3). A woman sitting in a motor car is not “wandering in the public streets” (*Carnill v. Edwards* [1953] 1 W.L.R. 290).

WANT. “In the want of,” e.g. a certificate, does not connote that the thing cannot be obtained, or that the person spoken of is bound to obtain it if possible (*per Bayley J.*, *Suart v. Powell* 1 B. & Ad. 273).

“Does not want”: see **LEFT**.

“For want of” objects of preceding limitation: see **DIE WITHOUT ISSUE**.

WANTING A PILOT. “Wanting a pilot” (Pilotage Act 1825 (c. 125), s.72: see Pilotage Act 1913 (c. 31), s.48(1)(g)) is not to be confined to such vessels as are bound to take a pilot, but applies to any vessel the master or owner of which thinks fit to require one (*Lucey v. Ingram* 9 L.J. Ex. 196).

WANTON. (1) “ ‘Wantonly’ means not having a reasonable cause. ‘Wantonness’ consists in the doing that which will annoy another, and which the party doing it knows will produce no results to himself” (*per Willes J.*, *Clarke v. Hoggins* 11 C.B.N.S. 551, 552).

(2) “Where the taxing officer is satisfied that an issue has been vexatiously and improperly put on the record so as to occasion a wanton and unnecessary increase in the amount of costs he is not to allow the costs of that issue” (*per Sir Creswell Creswell* in *Allen v. Allen and D’Arcy* (1860) 2 Sw. & Tr. 107). Telling a great deal less than the truth and being guilty of so much invention that the length of the trial is prolonged does not necessarily amount to a “wanton and unnecessary increase” so as to come within the above (*Bock v. Bock* [1955] 1 W.L.R. 843).

See **UNREASONABLE**.

WAPENTAKE. “Is all one with that which wee call hundred” (Termes de la Ley; Cowel; 1 Bl. Com. 115). Cp. **RAPE**, para. (6).

WAR. (1) “What constitutes a state of war is well described in Hall’s International Law (4th ed.), 63: ‘When differences between states reach a point at which both parties resort to force, or one of them does acts of violence which the other chooses to look upon as a breach of the peace, the relation of war is set up, in which the combatants may use regulated violence against each other until one of the two has been brought to accept such terms as his enemy is willing to grant’ ” (*per Mathew J.*, *Driefontein Mines v. Janson* [1900] 2 Q.B. 343); there is no authority for the supposed doctrine that a subsequent state of war will relate back to a prior seizure so that the latter may be said to have been made whilst there was a state of war (*ibid.*). *Driefontein Mines v. Jason* was affirmed by Court of Appeal [1901] 2 K.B. 419, and by House of Lords, nom. *Janson v. Driefontein Mines* [1902] A.C. 484. See also *Marais v. General Officer Commanding, etc.* [1902] A.C. 109.

(2) (a) An alternative stipulation in a charterparty if “war” has commenced does not mean war in any part of the world, but means war between countries which would render the originally intended voyage unlawful (*Avery v. Bowden* 5 E. & B. 714; 6 *ibid.* 953; 25 L.J.Q.B. 49; 26 *ibid.* 3; 5 W.R. 45).

(b) In a charterparty was held to include the hostilities between Japan and China.

which were not preceded by a formal declaration or severance of diplomatic relations (*Kawasaki Kisen Kabushiki Kaisha of Kobe v. Bantham Steamship Co. Ltd.* [1939] 2 K.B. 544).

(3) As to the effect of war on a contract: see *Ashmore v. Cox* [1899] 1 Q.B. 436, cited IMPOSSIBLE.

(4) "War, bombardment, military or usurped power" (in an insurance policy): see *Curtis & Sons v. Matthews* [1919] 1 K.B. 425.

(5) "During the present war" in a will construed as equivalent to "during the continuance of hostilities" (*Re Cooper* [1946] Ch. 109).

(6) "Operations of war" (Finance Act 1941 (c. 30), s.46) do not include death in a car accident (*Re Pitt, Mendel v. A.-G.* [1945] 173 L.T. 272).

Stat. Def., Validation of War-time Leases Act 1944 (c. 34), ss.2, 7.

See CIVIL WAR; CONTRABAND; LEVY WAR; SHIP.

WAR CLAUSE. The expression "and war clause" is so vague and uncertain that its introduction into a contract for the sale of goods renders the contract void for uncertainty (*Bishop & Baxter v. Anglo-Eastern Trading & Industrial Co.* [1944] K.B. 12).

WAR INJURIES; WAR SERVICE INJURIES. (1) (Personal Injuries (Emergency Provisions) Act 1939 (c. 82), s.8) does not include injuries caused by the negligence or breach of duty (*Baker v. Bethnal Green Borough Council* [1945] 1 All E.R. 135; cp. *Taylor v. Sims & Sims* 167 L.T. 415); nor injuries caused by trespass (*Billings v. Reed* [1945] K.B. 11); the definition does not include a purely mental injury (*Ex p. Harries* [1945] K.B. 183); an injury caused by falling into a bomb crater is not a war injury (*Greenfield v. London & North Eastern Railway* [1945] K.B. 89); nor the aggravation of the applicant's condition by the sight of the applicant's bomb-damaged house (*Young v. Minister of Pensions* 170 L.T. 183). See also *Cameron v. Minister of Pensions* [1945] S.L.T. 337 (injury from falling into a dock in the blackout); *Minister of Pensions v. Ffrench* [1946] K.B. 260 (injury in blackout); *Minister of Pensions v. Walton* 174 L.T. 236 (injury while proceeding to place of duty). The definition does not include injuries suffered by the collapse of a roof four years after it had been damaged (*Pope v. St. Helen's Theatre* [1947] K.B. 30); but it does include injury caused when an unexploded bomb exploded on being tampered with (*Minister of Pensions v. Chennell* [1947] K.B. 250), and injury from a fall when running to shelter from a flying bomb (*Evans v. Minister of Pensions* [1948] 1 K.B. 1). See also *Howgate v. Bagnall* [1951] 1 K.B. 265, cited IMPACT.

(2) Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939 (c. 83), s.10; Pensions (Mercantile Marine) Act 1942 (c. 26), ss.1, 5; the aggravation of organic disease is not a war injury within s.10 of the 1939 Act, but may be a war service injury within s.1 of the 1942 Act (*Re Saffell* [1945] K.B. 259); the death of a seaman run down by an army lorry during shore leave is not a "war injury" within s.10 of the 1939 Act (*Kemp v. Minister of Pensions* 114 L.J.K.B. 309); immediate physical consequences arising out of shock from finding a superior officer hanging dead in a store room would be a "war injury" (*Re Drake* [1945] 1 All E.R. 576). See also *Minister of Pensions v. Nugent* 115 L.J.K.B. 208 (injuries not sustained at sea); *Minister of Pensions v. Higham* [1948] 2 K.B. 153 (civilian assistant in N.A.A.F.I.); *Staynings v. Minister of Pensions* [1947] 1 All E.R. 347 (injury on a cable ship in Iceland not due to war conditions).

Stat. Def., Income and Corporation Taxes Act 1970 (c. 10), s.421(6).

WAR RISK. (1) A marine risk does not become a war risk merely because the conditions of war may make it more probable that the marine risk will operate and a loss be caused. Thus sailing without lights or sailing in convoy does not of itself convert marine risks into war risks (*Yorkshire Dale S.S. Co. v. Minister of War Transport* [1942] A.C. 691).

(2) "War risk for buyer's a/c," in a c.i.f. contract of sale, means that the risk of war is that of the buyer alone, and that if he desires to cover the risk he must take out the policy himself: see *C. Groom Ltd. v. Barber* [1915] 1 K.B. 316. A vessel which was torpedoed and subsequently towed some distance and then driven ashore by a storm, becoming a total wreck, was held to be lost owing to war, and not marine risk: see *Lobitos Oil Fields Ltd. v. Admiralty Commissioners* 34 T.L.R. 466.

(3) "War risk in an insurance policy includes a civil war risk (*Pesquerias y Secaderos de Bacalao de Espana S.A. v. Beer* [1949] 1 All E.R. 845).

(4) "War risk" (Capital Allowances Act 1968 (c. 3), s.33(7)). The dumping of shells after the end of a war is not a warlike operation, and the loss of a dredger by explosion after it had sucked some up, was not a loss due to "war risk" within the meaning of this section (*Costain-Blankevoort Dredging Co. v. Davenport* [1978] T.R. 369).

Stat. Def., War Risks Insurance Act 1939 (c. 57), s.6; Marine and Aviation Insurance (War Risks) Act 1952 (c. 57), s.10(1); Capital Allowances Act 1968 (c. 3), s.33.

WARD. (1) As to wardship in the old tenures, see 2 Bl. Com. 67, 87, 97; *Termes de la Ley, Gard, Gardeine*; Cowel, *Gard, Gardeyne*.

(2) "Ward of court" properly means a person under the care of a guardian appointed by the court; but the term has been extended to infants who are brought under the authority of the court by an application to it on their behalf, though no guardian is appointed by the court (*Brown v. Collins* 25 Ch. D. 60). This term covers infants brought under the authority of the court by an application to it on their behalf, though no guardian is appointed (*Re E. (An Infant)* [1956] Ch. 23).

"Casual ward": see CASUAL.

Municipal wards: see Local Government Act 1933 (c. 51), s.25.

See WATCH; NURTURE.

WARECTUM. "Warectum, or wareccum, or varectum doth signifie fallow, but in truth the word is verractum" (Co. Litt. 5 b). See also Cowel.

WAREHOUSE. (1) "A 'warehouse,' in common parlance, certainly means a place where a man stowes or keeps his goods which are not immediately wanted for sale" (*per Rolfe B., R. v. Hill* 2 Moo. & R. 459); and it was there held that a cellar used for such a stowage was a "warehouse" within Larceny Act 1826 (c. 29), s.15. In 1751, on Clerks of Assize Act 1698 (c. 12), it was held that "warehouses" meant "not mere repositories for goods but such places where merchants and other traders keep their goods for sale in the nature of shops, and whither customers go to view them" (*R. v. Howard Foster*, 78; see also *R. v. Godfrey Leach*, 288; *Haynes v. Ford* [1911] 2 Ch. 237, cited SHOP).

(2) (a) "Warehouse," in Factory and Workshop Act 1901 (c. 22): see *per Day J., Rogers v. Manchester Packing Co.* [1898] 1 Q.B. 344, cited BLEACHING; FACTORY.

(b) "Warehouse" (Factories Act 1937 (c. 67), s.105(1), Factories Act 1961

(c. 34), s.125) includes a dock transit shed (*Fisher v. Port of London Authority* [1962] 1 W.L.R. 234).

(3) (a) Probably of much application to the Factories Acts, and also of general utility, is the meaning of “warehouse” as used in the (repealed) Workmen’s Compensation Acts. What was a “warehouse” under the latter Act was a question of “mixed fact and law” (*per* Collins M.R., *Green v. Britten* inf.). “There is no definition of ‘warehouse’ in the Act, and we know that the term is used in a variety of senses; but I think that, as used in that Act, it does not include a retail shop, otherwise every such shop would come under the provisions of the Factory Acts, which have not hitherto, so far as I am aware, been held applicable to them. While it may be difficult to define ‘warehouse,’ I am of opinion that, as used in this Act, it involves the idea of a place normally of considerable size, mainly used for the storage of goods in bulk or in large quantities, and in which, consequently, the dangers incident to the handling of goods in bulk or in large quantities might naturally arise” (*per* Kinross L.P., *Colvine v. Anderson* 40 Sc. L.R. 233). “It seems to me that that defines, as accurately as possible, what is a ‘warehouse’ within the meaning of the Act” (*per* Collins M.R., *Green v. Britten* [1904] 1 K.B. 356), in which case it was held that a railway arch, adapted for and used as a storage place for goods from which goods were delivered to customers who made their purchases in a shop on the other side of the road, was a “warehouse” ([1904] 1 K.B. 350). So, of a carrier’s place for storing goods in their transit, though such goods generally remained there for a few hours but sometimes for a night and, in special cases, for a few nights (*per* Stonor, County Court Judge, *Adams v. Great Western Railway* 48 S.J. 134).

(b) But a retail shop, even though it be very large and where goods of great amount are kept, was not a “warehouse” within the Act (*Burr v. Whiteley* 19 T.L.R. 117; *Colvine v. Anderson* sup.; *per* Collins M.R., *Green v. Britten* sup.); but see *Moreton v. Reeve* [1907] 2 K.B. 401, where it was held that there is no absolute rule of law that a store attached to a retail shop cannot be a warehouse within the meaning of the Act. Cp. *Haynes v. Ford* [1911] 2 Ch. 237, cited SHOP.

(c) A large yard, used as a dumping-ground for waste and refuse materials, was held not a “warehouse,” even though some of the materials were sold there (*Buckingham v. Fulham* 21 T.L.R. 511). So, a timber merchant’s yard—bounded on two sides by walls belonging to adjoining owners, at the back by a wooden fence or paling, and in front by a similar fence in which were two wooden doors—was not a “warehouse” (*per* Bray, County Court Judge, *Carter v. Shipway* 50 S.J. 311, cited dicta of Collins L.J., in *Haddock v. Humphrey* [1901] 1 Q.B. 609, cited WHARF, and judgment of Cozens-Hardy L.J., in *Buckingham v. Fulham* sup.). So, a municipal stone-yard, used for the storage of pipes, cement and other materials for road-making and for the breaking of road metal and its storage in heaps, was not a “warehouse” (*M’Ewan v. Perth Magistrates* 7 Fraser 714). See also *Wilmott v. Paton* [1902] 1 K.B. 237; ACTUAL USE OR OCCUPATION; FACTORY.

(4) “Warehouse” or “other building” (Representation of the People Act 1832 (c. 45), s.27): see *Watson v. Cotton* 5 C.B. 51.

(5) In *R. v. Edmundson* (28 L.J.M.C. 213) a warehouse was included in “other place” in the phrase “dwellinghouse, outhouse, yard, garden, or other place.”

(6) Warehouse receipts: see *Tennant v. Union Bank of Canada* [1894] A.C. 31, cited BANKING. See *Graham v. Shiels* 8 Sc. L.T. 368, cited DWELLINGHOUSE.

(7) “Warehouse to warehouse,” in Clause No. 6, Institute Cargo Clauses in marine insurance policy: see *Re Traders’ General Insurance Association Ltd.* [1924] 2 Ch. 187. See RISK.

(8) "Wholesale warehouse" (Town and Country Planning (Use Classes) Order 1972 (No. 1385), Sched., Class X). The Court of Appeal held that it was open to the Secretary of State on a planning appeal, as in this case, to hold that a "cash and carry wholesale warehouse" was not a "wholesale warehouse" within the meaning of this Class (*LTSS Print and Supply Services v. London Borough of Hackney* [1976] Q.B. 663). A "warehouse" means a place at which goods are stored, and premises used primarily for the sale of retail goods are not being used as a warehouse within the terms of a planning permission (*Monomart (Warehouses) v. Secretary of State for the Environment* (1977) 34 P. & C.R. 305). A building used for the examination of used tyre casings to see whether they would be suitable for remoulds, and the storing of large numbers awaiting despatch to a remoulder was a "wholesale warehouse" within the meaning of Class X (*Crusabridge Investments v. Casings International* (1979) T.C. Leaflet No. 2799).

(9) "Warehouse" (Vagrancy Act 1824 (c. 83), s.4) did not include a room in a Post Office building used as a sorting office and containing a large number of letters and parcels kept there pending delivery (*Holloran v. Haughton* [1976] Crim. L.R. 270).

Stat. Def., Spirits Act 1880 (c. 24), s.3; Merchant Shipping Act 1894 (c. 60), s.492; Customs and Excise Management Act 1979 (c. 2), s.1.

See EX QUAY OR WAREHOUSE; WHARF.

WAREHOUSEMAN. (1) "This is a term well understood in London, and means a person who buys and sells linens, muslins, silks, and woollen goods by wholesale; and does not, it should seem, include in it every person who owns or keeps a warehouse" (Arch. Bank. (11th ed.) 37; this comment was on "warehousemen" as contained in the late bankruptcy definition of "trader"). See also *Clark v. Denton* 1 B. & Ad. 102, 103.

(2) In Explosives Act 1875 (c. 17), s.108, " 'warehouseman' includes all persons owning or managing any warehouse, store, wharf, or other premises, in which goods are deposited."

(3) In Merchant Shipping Act 1894 (c. 60), s.492, " 'warehouseman' means the occupier of a 'warehouse' as" therein defined.

See COMMON CARRIER.

WARES. See GOODS, WARES, AND MERCHANDISE; WARE.

WARETTUM. A synonym for *wreccum maris*, wreck (Hale, *De Jure Maris*, ch. 7); but in ch. 6, *ibid.*, Hale speaks of "*Littus Maris*, sometimes called *marettum*, sometimes *warettum*." See also MARETTUM; SHORE.

WARLIKE. "Warlike operations, whether before or after declaration of war": see *Robinson Gold Mining Co. v. Alliance Insurance* [1902] 2 K.B. 489, affirmed in House of Lords [1904] A.C. 359. See also *British S.S. Co. v. Green* [1921] A.C. 99, where the meaning of the words "warlike operations," in a charterparty, was fully considered. For further examples, see *Moor Line Ltd. v. R.* 36 T.L.R. 799; *Harri-sons Ltd. v. Shipping Controller* [1921] 1 K.B. 122; *The Caroline* 37 T.L.R. 617; *Hindustan S.S. Co. v. Admiralty Commissioners* 37 T.L.R. 856; *A.-G. v. Ard Coasters Ltd.* [1921] 2 A.C. 141; *Richard de Larrinaga Owners v. Admiralty Commissioners* [1921] 2 A.C. 141; *Re P. & O. Branch Service* [1923] A.C. 175; *Adelaide S.S. Co. v. R.* [1923] 1 K.B. 59; *Atlantic Transport Co. v. Director of Transports* 38 T.L.R. 160; *Eagle Oil Transport Co. Ltd. v. Board of Trade* 42 T.L.R. 201; *Board*

of *Trade v. Cayzer, Irvine & Co.* 96 L.J.K.B. 872; *Clan Line Steamers Ltd. v. Board of Trade* [1929] A.C. 514; *Board of Trade v. Hain S.S. Co.* [1929] A.C. 534. See *Yorkshire Dale S.S. Co. v. Minister of War Transport* [1942] A.C. 283. A ship proceeding in ballast to a port from which she was to proceed on a warlike operation was held not to be engaged in a warlike operation within Charterparty T. 99 (*Wharton (Shipping) Ltd. v. Mortlemain* [1942] 2 K.B. 283). See also *Larrinaga S.S. Co. v. R.* [1945] A.C. 246 (ship returning empty from war base with a view to derequisitioning not on warlike operations); *Athel Line v. Liverpool & London War Risks Association* [1946] K.B. 117 (vessel at anchor while carrying oil to Royal Navy engaged in warlike operation); *Liverpool & London War Risks Insurance Association v. Ocean S.S. Co.* [1948] A.C. 243 (carrying a deck cargo of war stores in North Atlantic winter weather and proceeding at full speed in a gale under Government orders a warlike operation); *Clan Line Steamers Ltd. v. Liverpool & London War Risks Association* [1943] 1 K.B. 209; *Shaw Savill and Albion Co. Ltd. v. Commonwealth* 66 C.L.R. 344.

See CONSEQUENCES.

WARN. A defendant is not “warned” within the meaning of s.179(2)(a) of the Road Traffic Act 1972 (c. 20) unless he both hears and understands the warning (*Gibson v. Dalton* [1980] R.T.R. 410). An interview by a police constable concerning the accident is not a warning within the meaning of this section (*Bentley v. Dickinson* [1983] R.T.R. 356).

WARNING. (1) Motor Car Act 1903 (c. 36), s.9(2) (see Road Traffic Act 1930 (c. 43), s.21); see *Parker v. Cole* 127 L.T. 152.

(2) The meaning of “warning” in a labour dispute was discussed in *Hodges v. Webb* [1920] 2 Ch. 70, cited COERCION; see also *Pratt v. B. M. A.* [1919] 1 K.B. 244.

WARP. “ ‘Warp’ is a denomination of some kind of thread prepared to be woven and used in manufacture; it is, in itself, something ‘prepared for manufacturing goods’ ” (*R. v. Ashton* 2 B. & Ad. 756).

WARPLE WAY. See *Serff v. Acton* 31 Ch. D. 680.

WARRANT. (1) “Warrant” has two frequent meanings—

(a) A document (ordinarily issued by a magistrate) for the apprehension of an accused person, in order to compel him to appear and answer the charge brought against him (4 Bl. Com., ch. 21), or to search for property with respect to which an offence against the Larceny or Theft Acts is suspected to have been committed.

(b) A document authorising something to be done, or for the delivery of goods, or for the payment of money.

(2) “Warrant for the delivery of goods” (Forgery Act 1861 (c. 98), s.23) included a pawnbroker’s ticket (*R. v. Morrison* 28 L.J.M.C. 210); see also AUTHORITY OR REQUEST.

(3) “Warrant for goods”: see Stamp Act 1891 (c. 39), s.111. “Warrant for goods” takes the place of, and its definition (in Stamp Act 1891 (c. 39), s.111) is nearly similar to that of, “dock warrant,” in the Schedule to Probate Duty Act 1860 (c. 15). A mere acknowledgment by a warehouseman of the receipt of a delivery order is not a “warrant for goods”; but if it acknowledges that, by virtue of the order, the transferee has acquired the right to the goods mentioned in the order, subject to no other condition than the payment of the warehouse rent, then it is a

“warrant for goods,” for it is “evidence of the title” of the transferee to the goods, at any rate as between him and the warehouseman by whom such a warrant is to be made (*Distillers Co. v. Inland Revenue Commissioners* 36 Sc. L.R. 538).

(4) “Warrant to vacate”: see *Firth v. Inland Revenue Commissioners* [1904] 2 K.B. 207, cited DISCHARGE.

(5) A warrant of attorney was a mode of giving a creditor security by his debtor authorising a solicitor to confess judgment against the debtor for an amount agreed on: see hereon Warrants of Attorney Acts 1822 (c. 39) and 1843 (c. 66), Debtors Act 1869 (c. 62), ss.24–28; *Cook v. Fowler* L.R. 7 H.L. 27. Cp. POWER OF ATTORNEY.

“Warrant for the arrest” of a person failing to attend for public examination: see r. 76, Companies Winding-up Rules 1890; r. 13, Companies Winding-up Rules 1892. See Companies (Winding-up) Rules 1949 (No. 330), r. 66.

“Share warrant”: see SHARE, at end.

“Treasury warrant”: see TREASURY.

Stat. Def., Dividends and Stock Act 1869 (c. 104), s.6; Extradition Act 1870 (c. 52), s.26; National Debt Act 1870 (c. 71), s.3; Government Annuities Act 1929 (c. 29), s.58.

See CHEQUE.

WARRANTED FREE FROM AVERAGE. (1) “Warranted free” means that the insurers are not to be liable for the things to which the warranty applies (*Cory v. Burr* 52 L.J.Q.B. 657).

(2) “Warranted free of all average” “means that the underwriters are only to be liable in the event of a total loss” (*per Smith M.R., Price v. Maritime Insurance* [1901] 2 K.B. 412). See also *Continental Grain Co. (Inc.) v. Twitchell* [1945] 1 All E.R. 357.

See AVERAGE; STRANDING; WARRANTY; TOTAL LOSS.

WARRANTED HIGHEST RATE. As to this phrase in a Lloyd’s policy, see *Walker v. Uzielli* 1 Com. Ca. 452, which see for “warranted same premiums and conditions.”

WARRANTED IN PORT. This phrase usually means in the port from which the voyage is to commence (*Colby v. Hunter Moo. & M.* 81).

See IN PORT.

WARRANTED SOUND. Horse sold “warranted sound, for one month,” means that the warranty is to continue in force for one month only, and that complaint of unsoundness must therefore be made within one month of the sale (*Chapman v. Gwyther* L.R. 1 Q.B. 463; see also *Bywater v. Richardson* 3 L.J.K.B. 164).

See SOUND; VICE.

WARRANTY. (1) “A warranty is an express or implied statement of something which the party undertakes shall be part of a contract, and though part of the contract yet collateral to the express object of it. But in many of the cases, the circumstances of a party selling a particular thing by its proper description has been called a warranty and the breach of such a contract a breach of warranty; but it would be better to distinguish such cases as a non-compliance with a contract which a party has engaged to fulfil: as if a man offers to buy peas of another and he send him

beans, he does not perform his contract; but that is not a warranty; there is no warranty that he should sell peas; the contract is to sell peas and if he sends him anything else in their stead it is non-performance of it" (*per* Abinger C.B., *Chanter v. Hopkins* 8 L.J. Ex. 16; quoted by Martin B., *Azemar v. Casella* 36 L.J.C.P. 264).

(2) "The proper significance of the word 'warranty' in the law of England is an agreement which refers to the subject-matter of a contract, but, not being an essential part of the contract either intrinsically or by agreement, is collateral to the main purpose of such a contract. Yet irrespective of this the word came to be employed in England when what was really meant was something of a wider operation, a pure condition" (*per* Lord Haldane, in *Dawsons Ltd. v. Bonnin* [1922] 2 A.C. 413).

(3) In essence warranty is contractual in its nature. A statement which is not contractual cannot be converted into a cause of action by calling it a warranty (*Finnegan v. Allen* [1943] K.B. 425).

(4) A "warranty" denotes a binding promise. The word is also used to denote a subsidiary term in a contract as distinct from a vital term which is called a "condition" (*Oscar Chess v. Williams* [1957] 1 W.L.R. 370).

(5) If, in the course of dealings for a contract, a representation is made which was intended to be acted on, and was in fact acted on, that was *prima facie* ground for inferring that the representation was a "warranty" (*Dick Bentley Productions v. Harold Smith (Motors)* [1965] 1 W.L.R. 623).

(6) "It was rightly held by Holt C.J. (*Crosse v. Gardner* Carth. 90; 3 Mod. 261; *Medina v. Stoughton* Salk. 210), and has been uniformly adopted ever since, that an affirmation at the time of sale is a warranty, provided it appear on evidence to have been so intended" (*per* Buller J., *Pasley v. Freeman* 3 T.R. 51). See also *De Lasalle v. Guildford* [1901] 2 K.B. 215. In that case a parol affirmation that the drains of a house were in good condition was held to amount to a warranty, and was collateral to the written agreement for the letting of the house, and could accordingly be relied on and given in evidence by the tenant.

(7) (a) In sale of goods, " 'warranty' as regards England and Ireland, means an agreement with reference to goods which are the subject of a contract of sale, but collateral to the main purpose of such contract, the breach of which gives rise to a claim for damages, but not to a right to reject the goods and treat the contract as repudiated: As regards Scotland, a breach of warranty shall be deemed to be a failure to perform a material part of the contract" (Sale of Goods Act 1893 (c. 71), s.62(1)). Speaking generally, a sale of goods implies a warranty of title but not of quality (2 Bl. Com. 451), except as to title, where the circumstances negative the implication, or where, as to quality, the implication arises when there is a stipulated quality or when the goods are supplied for a specified purpose (Add. C. (11th ed.) 559 *et seq.*).

(b) Generally "there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale" (Sale of Goods Act 1893, s.14); the exceptions are contained in the subsections to s.14; on subs. (1), see MAKE KNOWN, *Gillespie v. Cheney* [1896] 2 Q.B. 59, cited ARTICLE; *Manchester Liners v. Rea Ltd.* [1922] 2 A.C. 74; and *Clarke v. Army & Navy Co-operative Society* [1903] 1 K.B. 155; on subs. (2) see MERCHANTABLE. See also *Wallis v. Pratt* [1911] A.C. 394, cited DESCRIPTION, in which case see *per* Fletcher Moulton L.J., as to the difference in usage between "warranty" and "condition." See also *Baldry v. Marshall* [1925] 1 K.B. 260.

(c) *Semble*, an express warranty does not exclude an implied warranty that is not inconsistent with it (*Douglas v. Milne* 23 Rettie 163). See also *Medway Oil, etc., Co. v. Silica, etc., Corporation* 33 Com. Cas. 195.

(d) As to the measure of damages for breach of warranty on sale of goods, see *Loss*; *Finlay & Co. v. Kwik Hoo Tong* [1929] 1 K.B. 400.

(e) As to the remedy for breach of warranty, see *Sale of Goods Act 1893*, s.53; *Salter v. Hoyle & Smith* [1920] 2 K.B. 11.

(8) Implied warranty of authority to do an act: see *Starkey v. Bank of England* [1903] A.C. 114. Cp. *Sheffield v. Barclay* [1905] A.C. 392, applied in *Bank of England v. Cutler* [1908] 2 K.B. 208; *A.-G. v. Odell* [1906] 2 Ch. 47, cited RECTIFY; HOLD OUT; *Edwards v. Porter* [1925] A.C. 1.

(9) In charterparties and marine insurances, “warranted” or “warranty” is, and for many years has been, synonymous with “condition” (*per Williams J.*, *Behn v. Burness* 32 L.J.Q.B. 205; see also *Barnard v. Faber* [1893] 1 Q.B. 340), strictly binding on the party making it (Park, ch. 18). But a representation, *i.e.* a statement not appearing on the face of the instrument itself, “need only be performed in substance,” and an error in a representation does not vitiate the policy if made without fraud and not false in a material point, or if the representation be substantially, though not literally, fulfilled (Park, 663, citing *Pawson v. Watson* Cowp. 787; see also *Behn v. Burness* *sup.*; *Quin v. National Assurance Jones & Carey*, 316). See also *Marine Insurance Act 1906* (c. 41), ss.33–41; *Union Insurance v. Willis* [1916] A.C. 287.

(10) In a contract for work and materials there is a warranty that the materials used will be of good quality and reasonably fit for that purpose, unless the circumstances of the contract are such as to exclude any such warranty, *e.g.* unless the person doing the work is given express instructions as to where he is to get the materials (*G. H. Myers & Co. v. Brent Cross Service Co.* [1934] 1 K.B. 46; cf. *Samuels v. Davis* [1943] K.B. 526).

(11) An excise certificate given pursuant to the *Spirits Act 1880* (c. 24), s.108, was a written warranty for the purposes of s.84(1)(a) of the *Food and Drugs Act 1938* (*Follet v. Luke* [1947] K.B. 289).

(12) In regard to real property, “a warrantie is a covenant reall annexed to lands or tenements, whereby a man and his heires are bound to warrant the same” (Co. Litt. 365 a; Cowel; Jacob).

(13) A warranty is a stipulation subsidiary to or collateral with a principal contract, a breach of which gives rise to a claim for damages but does not affect the principal contract. Having regard to the rule *caveat emptor* and to the obligation of a purchaser to make inquiries for himself, it is difficult to establish a warranty in a contract for the sale of land (*Terrene v. Nelson* 157 L.T. 254; *London County Freehold & Leasehold Properties v. Berkeley Property & Investment Co.* 155 L.T. 190).

(14) In a contract by builders or the owners of a building site for the sale of a house to be erected or in course of erection there is an implied warranty that the house will be properly built and fit for habitation (*Lawrence v. Cassel* [1930] 2 K.B. 83; *Miller v. Cannon Hill Estates Ltd.* [1931] 2 K.B. 113).

(15) Misstatements in proposal forms to lead to insurance though innocent are warranties (*Holmes v. Scottish Legal Life Assurance Society* 48 T.L.R. 306).

Stat. Def., *Sale of Goods Act 1979* (c. 54), s.61.

“Written warranty,” see WRITTEN WARRANTY.

“Upon any representation or assurance”: see UPON.

See FALSE WARRANTY; WRITTEN WARRANTY.

WARREN. (1) “‘Warren’ is a place privileged by prescription or grant of the King for the preservation of hares, conies, partridges, and phesants, or any of

them" (Termes de la Ley). See also Seldon Society Publications, Vol. 13, cxxiii *et seq.*

(2) A warren, or free warren, is a franchise to have and keep game within a manor, or other known place (Williams on Rights of Common, 238, which see for Crown grant of a free warren). See also Hall on Profits à Prendre and Rights of Common, ch. 21.

(3) Although Coke says (Co. Litt. 5 b) that by a grant of a warren not only the privilege but the land itself passes, yet it has been recently held by the House of Lords that the grant of a "warren," e.g. "warren of conies," does not prima facie pass the soil, though it may do so by a context (*Beauchamp v. Winn* L.R. 6 H.L. 223). *Robinson v. Dhuleep Singh* (11 Ch. D. 798) is an instance in which, contextually, the word was held (by Fry J.) to pass the soil. See also para. (4).

(4) "A warren is not parcel, nor any member, of a manor; but it may be appertaining, but that is by prescription" (*Bowlston v. Hardy* Cro. Eliz. 547); therefore, a grant of a manor with all its appertaining franchises and appurtenances (*Morris v. Dimes* 3 L.J.K.B. 170), or even of a manor "and all warrens, etc., thereto appertaining, or accepted and reputed as part" thereof (*Bowlston v. Hardy* sup.), will not pass a warren in GROSS. In *Morris v. Dimes* Channell arg. said, "A warren is a realty in land, but is not part or parcel of the land (35 Hen. 6, fo. 56). Free warren may be in one, the land in another; and if a party, having both, alien the land, the warren does not pass (8 Hen. 5, p. 4); and the conveyance of land *cum pertinentibus* will not pass warren." See also *Pannell v. Mill* 3 C.B. 625, cited ROYALTIES.

(5) A grant by the King of "free warren" and "free chase" does not extend over the King's own lands unless the grant contain unequivocal words to show that such was the intention; see *A.-G. v. Parsons* cited DEMESNE.

Beasts of warren: see BEASTS.

Fowl of warren: see FOWL.

Cp. CHASE; PARK; TENEMENT.

WASH-HOUSE. See BATH.

As to Baths and Wash-houses Act 1846 (c. 74), ss.25, 26, see *A.-G. v. Fulham Corporation* 90 L.J. Ch. 281.

Stat. Def., Public Health (London) Act 1936 (c. 50), s.304.

WASTE. (1) Waste is an act, or omission, by the tenant in possession, occasioning the destruction of, or injury to, "houses, gardens, woods, trees, or in lands, meadows, etc., or in exile of men, to the disherison of him in the reversion or remainder. There be two kinds of waste, viz. voluntary or actuall, and permissive" (Co. Litt. 53 a; DO OR MAKE; see also Termes de la Ley, *Wast*; 2 Bl. Com. 281; Add. T. (8th ed.) 358 *et seq.*; Woodf.).

(2) Voluntary waste is "the committing of any spoil or destruction in houses, lands, etc., by tenants, to the damage of the heir or of him in reversion or remainder" (Bacon Abr. tit. "Waste"); "the law will not allow that to be waste which is not anyways prejudicial to the inheritance" (*per Richardson C.J., Barret v. Barret Hetley*, 35). For example, if a tenant for life cuts timber that, generally speaking, is waste; yet if there are periodical cuttings of timber which are in accordance with the modern practice on the estate and in the neighbourhood, and in the ordinary course of good forestry for the preservation of the woods and to secure a due succession of timber, such cuttings are not waste, and the tenant for life is entitled to them as part of the annual profits (*Dashwood v. Magniac* [1891] 3 Ch. 306, and *Honywood v.*

Honywood L.R. 18 Eq. 306, cited *TIMBER*); such a property becomes more or less a timber estate, but that is a conclusion which will require fairly clear proof (*Pardoe v. Pardoe* 82 L.T. 547).

(3) “The best definition of ‘waste’ that I have been able to find is in *Darcy v. Askwith* (Hob. 234), which is in these words: ‘It is generally true that the lessee hath no power to change the nature of the thing demised; he cannot turn meadow into arable, nor stub a wood to make it pasture, nor dry up an antient pool or piscary, nor suffer ground to be surrounded, nor decay the pale of park (for then it ceaseth to be a park); nor he may not destroy or drive away the stock or breed of any thing, because it disinherits and takes away the perpetuity of succession, as villains, fish, deer, young spring of woods, the like; but he may better a thing in the same kind, as by digging a meadow to make a drain or sewer to carry away water.’ The test, as there laid down, seems to be, whether the act which the lessor says is an act of waste by the lessee is an act which alters the nature of the thing demised” (*per* Buckley J., *West Ham v. East London Water Works Co.* [1900] 1 Ch. 624, which see for an example).

(4) Voluntary waste is divisible into (a) meliorating waste, and (b) equitable waste.

(5) Meliorating voluntary waste is that which betters, and which, *semble*, is not punishable or restrainable unless substantial damage is proved, or some express prohibitive stipulation is broken (*Doherty v. Allman* 3 App. Ca. 709; *Jones v. Chappell* L.R. 20 Eq. 539; *Meux v. Cobley* [1892] 2 Ch. 253; *Re McIntosh and Pontypriidd Improvements Co.* 61 L.J.Q.B. 164). *Smyth v. Carter* (18 Bea. 78) is of but little value hereon (*per* Lord O’Hagan, *Doherty v. Allman* *sup.*).

(6) Equitable voluntary waste “is that which a prudent man would not do in the management of his own property” (*per* Campbell C., *Turner v. Wright* 2 D.G.F. & J. 243), and is the creation of equity, and arises in cases of destructive or wanton waste which, at law, would have been excused by the words “without impeachment of waste”: “‘Without impeachment of waste (sauns impeachment de wast),’ *absque impetitione vasti* (that is) without any challenge or impeachment of waste, and by force hereof the lessee may cut down the trees and convert them to his own use” (Co. Litt. 220 a). But now, the words “without impeachment of waste” will not confer even “any legal right to commit equitable waste” (Judicature Act 1873 (c. 66), s.25(3); see Law of Property Act 1925 (c. 20), s.135). So that now, both at law and equity, “the term ‘without impeachment of waste,’ contained in a deed or will creating a life estate in land, does not enable the life tenant to deal with the property as if he were the absolute owner thereof in fee simple. He may cut down timber and growing trees fit for timber (*Smythe v. Smythe* 2 Swanst. 251; *Gordon v. Woodford* 29 L.J. Ch. 222), and convert them to his own use (*Pyne v. Dor* 1 T.R. 56), and open new mines and work them for his benefit; but he cannot dig and carry off brick-earth, and destroy a field to the prejudice of the inheritance (*London v. Web* 1 P. Wms. 528); and he will be restrained from committing wanton and malicious waste, such as damaging and destroying buildings, pulling down ancient boundary walls and fences (*Aston v. Aston* 1 Ves. sen. 265; *Vane v. Barnard* 2 Vern. 739; *Leeds v. Amherst* 16 L.J. Ch. 5), and cutting down thriving wood unfit for timber, and the felling of which would be destructive to the property (*Chamberlayne v. Dummer* 1 Bro. C.C. 166; 3 *ibid.* 549); also from cutting down trees which were either planted, or left standing, for the shelter or ornament of a mansion-house (*Newdigate v. Newdigate* 2 Cl. & F. 601, cited *ORNAMENTAL TIMBER*; *Micklethwait v. Micklethwait* 26 L.J. Ch. 721, applied in *Weld-Blundell v. Wolseley* [1903] 2 Ch. 664; see hereon Settled Land Act 1925 (15 Geo. 5, c. 18), s.89); *Wel-*

lesley v. Wellesley 6 Sim. 497; *Burges v. Lamb* 16 Ves. 174; see *Bubb v. Yelverton* L.R. 10 Eq. 465), but he may cut down such ornamental timber as the court would sanction for the preservation of the rest, and would be entitled to the proceeds (*Baker v. Sebright* 13 Ch. D. 179). But he is not responsible, although he allows a mansion-house and buildings to go to wrack and ruin for want of timely repairs to the roof and windows (*Powys v. Blagrove* 24 L.J. Ch. 142; *Landsowne v. Landsowne* 1 Jac. & W. 522, overruling *Parteriche v. Powlett* 2 Atk. 383); nor if he pulls down a ruinous structure, and uses up the materials in rebuilding it (*Morris v. Morris* 28 L.J. Ch. 329)"; Add. T. (8th ed.) 364. See also 2 White & Tudor (9th ed.), 920.

(7) "The words 'without impeachment of waste,' as applied to trustees of a term for special purposes, have, however, a very different sense from the same words annexed to a tenancy for life. The court will not permit trustees so holding, to execute their trust by cutting down timber (*Downshire v. Sandys* 6 Ves. 115)"; Add. T. (8th ed.) 364; see also *Campbell v. Allgood* 17 Bea. 623. In *Garth v. Cotton* (1 Ves. sen. 524, 546) it was considered that the phrase "without impeachment of waste" was rendered nugatory by adding "except voluntary waste." However, in *Vincent v. Spicer* (25 L.J. Ch. 589), the words were "without impeachment of or for any manner of waste, except spoil or destruction, or voluntary or permissive waste, or suffering buildings to go out of repair" and under those words Romilly M.R., held that a tenant for life might cut all timber (except ornamental timber), which an owner in fee, who regarded his own interest and the permanent advantage of the estate, would probably cut. See WITHOUT IMPEACHMENT OF WASTE.

(8) As to the powers and rights of a tenant for life when he is unimpeachable for waste, see *Re Medows* [1898] 1 Ch. 300; *Cowley v. Wellesley* L.R. 1 Eq. 656.

(9) See also, as to waste, Co. Litt. 52 b–54 b, and tit. "Waste" in index: Woodf.; Bewes on Waste; *Dunn v. Bryan* Ir. Rep. 7 Eq. 143; *Brooke v. Mernagh* 23 L.R. Ir. 86; *Brooke v. Kavanagh* *ibid.* 97. As to when life estates limited in pursuance of an executory trust are, or are not, to be made impeachable for waste, see Elph. 546.

(10) Permissive waste is damage resulting from the omission to do something which ought to be done, e.g. by non-repair (Co. Litt. 53); but "it is not waste at common law, either wilful or permissive, to leave the land uncultivated" (*per* Parke B., *Hutton v. Warren* 1 M. & W. 472), or (as the same learned judge said in the same case, as reported Tyr. & G. 653), "Permissive waste or ploughing sward are quite different from desisting to cultivate, which does not amount to waste at common law"; the dictum to the contrary (5 L.J. Ex. 235), *semble*, is inaccurately reported.

(11) In the absence of an express duty or obligation, no action for permissive waste lies by a remainderman against the estate of a deceased tenant for life (*Re Cartwright, Avis v. Newman* 41 Ch. D. 532; *Re Parry and Hopkin* [1900] 1 Ch. 160). Cp. KEEPING SAME IN REPAIR.

(12) The King shall keep lands of lunatics "without waste or destruction" (17 Edw. 2, c. 10) is to be construed in the ordinary, and not in the technical, sense (*Oxenden v. Compton* 2 Ves. 71).

(13) "Waste of the forest": see *Commissioners of Sewers v. Glasse* L.R. 19 Eq. 134, cited VICINAGE.

(14) When an owner or occupier of premises permitted (after notice) his communication pipe to remain in a condition in which it would cause waste of water, he "wrongfully fails" to do something to prevent that waste within Metropolis Water Act 1871 (c. 113), s.32 (*Grand Junction Waterworks Co. v. Rodocanachi* [1904] 2 K.B. 238). See CONSUMER; WATER CONSUMER.

(15) "Lessee will not commit any wastage or spoil"; see *Rush v. Lucas* [1910] 1 Ch. 439, cited PASTURE; distinguished *Clarke-Jervoise v. Scutt* [1920] 1 Ch. 382.

(16) Material can still be "waste" within the meaning of s.3 of the Control of Pollution Act 1974 (c. 40) even though the person permitting the deposit of it on his land had a use for it. The Act defines "waste" from the point of view of the person discarding the material (*Long v. Brooke* [1980] Crim. L.R. 109).

"Waste land of a manor." See WASTE LAND.

Ecclesiastical waste and dilapidations: see Phil. Ecc. Law, Pt. 5, ch. 5; DILAPIDATION.

Stat. Def., Control of Pollution Act 1974 (c. 40), s.30.

See ROADSIDE WASTE; COMMON LAND; WASTE GROUND; DO OR MAKE; WILFUL WASTE.

WASTE GROUND. (1) " 'Waste ground' is so called because it lies as wast, with little or no profit to the lord of the manor, and to distinguish it from the demesnes in the lords hands" (Cowel). See WASTE; DEMESNE; COMMON LAND.

(2) Grant by the Crown, as lord of the manor of Englefield, of "all those coal mines found, or to be found, within the commons, waste grounds, or marshes within the said lordship of E," with a proviso that the grant should be construed strictly as against the Crown, and most strictly and beneficially for the grantees; held, to pass coal lying under the foreshore of the estuary of the Dee, between high and low water marks, and forming part of the manor (*A.-G. v. Hanmer* 27 L.J. Ch. 837).

(3) "Waste or uncultivated land," in private ownership, which might be used in the white herring fishery industry under White Herring Fisheries Act 1771 (c. 31), s.11, ceased to be "waste or uncultivated" when the owner saw fit to use the land for useful purposes, e.g. for extending a ship-building yard (*Campbeltown Ship-building Co. v. Robertson* 35 Sc. L.R. 722).

WASTE LAND. "Waste land of a manor" (Commons Registration Act 1965 (c. 64), s.22(1)). In *Re Britford Common* ([1977] 1 W.L.R. 39) it was held that "waste land of the manor" meant land that was parcel of the manor, open and uncultivated, unoccupied and not comprised in the demesne lands of the manor, and that the cutting of grass for hay or silage could not make it part of the demesne and did not, therefore, render it unregistrable under this Act. In *Re Chewton Common* ([1977] 1 W.L.R. 1242) it was held that land could be registered as common land as being "waste land of the manor" provided that it was waste land at the date of registration and formerly belonged to a manor. This case, however, was disapproved of by the Court of Appeal in *Re Box Hill Common* ([1980] Ch. 109) where they held that land which had ceased to be connected with a manor before the date of registration was not "waste land of the manor" within the meaning of s.22(1), and that the registration as common land could not be confirmed. Three parcels of land between high and low water marks were the subject of a Crown grant of 1855. It was held that this conveyance, although of a movable foreshore, was of a fixed area of land and was not therefore registrable as "waste land of a manor" under s.22(1) when, later, through the sea receding, it became situated above high water mark (*Baxendale v. Instow Parish Council* [1981] 2 W.L.R. 1055).

WASTING. Wasting assets or securities are those which in their nature are terminating, e.g. terminating annuities and leaseholds: see hereon *Howe v. Dartmouth* 7

Ves. 137, cited PRODUCE. See also POSTPONE; *Re van Straubenzee* [1901] 2 Ch. 779, cited PRODUCE; SPECIE.

“Wasting asset.” Stat. Def., Finance Act 1965 (c. 25), Scheds. 6, para. 9 and 8, para. 1; Income and Corporation Taxes Act 1970 (c. 10), s.167; Stat. Def., Finance Act 1976 (c. 40), s.99(7); Capital Gains Tax Act 1979 (c. 14), s.37.

WATCH. “Watch or beset”: see BESET.

(1) In the phrase “watch and ward,” watch “is properly applicable to the night only”; ward “is chiefly applied to the daytime” (1 Bl. Com. 356).

(2) In and by Merchandise Marks Act 1887 (c. 28), s.7, “‘watch’ means all that portion of a watch which is not the watch case.”

WATER. (1) “Place for water” includes a well (*Hipkins v. Birmingham Gas Co.* 5 H. & N. 74).

(2) Reservation in a lease of “the free running of water and soil coming from any other buildings and lands contiguous to the premises hereby demised, in and through the sewers and watercourses made, or to be made, within through or under the said premises,” extends to water and soil coming from contiguous premises, whether arising, in the first instance, on or from such premises, or not; but it does not extend beyond water, in its natural condition, and such matters as are the product of the ordinary use of land for habitation, and therefore does not give a right of passage for the refuse of tan-pits (*Chadwick v. Marsden* L.R. 2 Ex. 285).

(3) A right to take “water” in a private Act meant naturally accruing water and not sewage effluent (*John S. Deed & Sons v. British Electricity Authority and Croydon Corporation* 66 T.L.R. (Pt. 2) 567).

“Open water”: see OPEN; FIRST OPEN WATER.

See RIVER; SUFFICIENT WATER; SUPPLY; WATERCOURSE; WATERS; WELL SUPPLIED; AERATED; CHATTELS; DOMESTIC; FIRST WATER; WASTE; WATER POWER.

WATER COMPANY. (1) A municipal corporation owning waterworks and supplying water and charging for same, was a “water company” within Public Health Act 1875, s.52 (*Wolverhampton v. Bilston* [1891] 1 Ch. 315).

(2) A company for supplying motive power by hydraulic pressure was not a water company (*London County Council v. London Hydraulic Power Co.* 14 T.L.R. 301).

(3) As to what would or would not be carrying on the business of a water company, so as to be ultra vires a railway company, see *A.-G. v. North Eastern Railway* [1906] 1 Ch. 310, affirmed [1906] 2 Ch. 675. As to when additional land may be used for collecting water and erecting waterworks, see *A.-G. v. Frimley and Farnborough Water Co.* [1908] 1 Ch. 727, distinguished in *A.-G. v. Barnet Water Co.* 54 S.J. 547.

WATER POWER. A workman repairing a hydraulic lift, and using the lift itself for the purpose of the repair, was engaged on a work for the repair of which machinery driven by “water power” was used within the definition of “engineering work” in s.7(2), Workmen’s Compensation Act 1897 (c. 37), s.7(2) (*Tullock v. Waygood* [1906] 2 K.B. 261).

WATER RATE. (1) In Waterworks Clauses Act 1847 (c. 17), s.3, “water rate” included “any rent, reward, or payment, to be made to the undertakers for a supply of water.” See *Northampton v. Ellen* [1904] 1 K.B. 299, cited NOT EXCEEDING.

(2) A lessor's covenant "to pay all rates, taxes, assessments, water rate, and other outgoings (except the gas and electric light), now or hereafter to be IMPOSED or ASSESSED upon the said premises, or on the lessor or lessee in respect thereof," includes, as "water rate," the ordinary rate, and not a special water rate for trade purposes, *e.g.* a supply of water for a restaurant (*Floyd v. Lyons* [1897] 1 Ch. 633). *Cp. Haslett v. Sharman* [1901] 2 Ir. R. 433, 439, cited TAXES; RATE. See *South Suburban Gas Co. v. Metropolitan Water Board* [1909] 2 Ch. 666. See DOMESTIC.

WATER SUPPLY. The analogy of the decision of the House of Lords in *Gas Light & Coke Co. v. South Metropolitan Gas Co.* 62 L.T. 126, on the expression "supply of gas" in the Metropolis Gas Act 1860 (c. 125), was applied to the expression "supply of water" in the special Acts of the water company in *A.-G. v. West Gloucestershire Water Co.* [1909] 2 Ch. 338.

See SOURCE; SUPPLY.

WATERCOURSE. (1) "Without saying that a 'watercourse' may never mean the channel in which water flows, it certainly may mean the stream or flow of the water itself; and whether it means the one or the other in any instrument, will very materially depend on the context" (*per* Coleridge J., delivering the judgment, *Doe d. Egremont v. Williams* 11 Q.B. 700).

(2) "'Watercourse' may mean, and perhaps the more natural meaning of it is, a channel in which water flows; and the grant of a right to make a watercourse may include the right to fill it with water, and use the water flowing in it when made" (*per* Lord Davey, delivering the judgment, *Remfry v. Natal* [1896] A.C. 558).

(3) See also *Taylor v. St. Helen's* 6 Ch. D. 264; and as to the acquisition of a right to a watercourse, see *Wood v. Waud* 3 Ex. 748; *Rameshur Pershad Narain Singh v. Koonj Behari Pattuk* 4 App. Ca. 121.

(4) "A watercourse means water flowing between banks more or less defined. To constitute a watercourse in which rights may exist or may be acquired by user or otherwise, the flow of water must possess that unity of character by which the flow on one person's land can be identified with that on his neighbour's land. Water which squanders itself over an indefinite surface is not a watercourse, nor a proper subject-matter for the acquisition of a right by user (*Briscoe v. Drought* 11 Ir. Com. Law Rep. 250; *Rawstron v. Taylor* 11 Ex. 369; *Broadbent v. Ramsbottom* 11 Ex. 602, 615). But the moment the water of a spring runs into a definite channel, it constitutes a watercourse (*Dudden v. Clutton Union* 26 L.J. Ex. 146). All accessions to such stream, from whatever source, form part of it (*Wood v. Waud* *sup.*). Where the question at the trial is whether there is a watercourse or not, the judge ought, before he leaves that question to the jury, instruct them as to what constitutes a 'watercourse' in law (*Briscoe v. Drought* *sup.*; see also *Elliott v. South Devon Railway* 2 Ex. 725; *R. v. Cottle* 16 Q.B. 412; *Cashill v. Wright* 6 E. & B. 891)."

(5) A claim by an owner of a copper mine to sink pits on his own land, to fill such pits with iron, and to cover the same with water pumped from the mine (in order to precipitate the copper in the water), and afterwards to let off the water into a watercourse in another's land, is a claim to a "watercourse" within Prescription Act 1832 (c. 71), s.2 (*Wright v. Williams* 5 L.J. Ex. 107; *Carlyon v. Lovering* 1 H. & N. 797).

(6) *Semble*, a tidal river may be included in "watercourse" (*Somersetshire Drainage Commissioners v. Bridgwater* 81 L.T. 729).

(7) "Drains, trenches, or watercourses" (Aire and Calder Navigation Act 1774 (c. 96), s.97) applied only to artificial streams made for improving the navigation of

the rivers mentioned in the Act, and not to natural streams (*Smith v. Barnham* 1 Ex. D. 419).

(8) "Watercourses" (Settled Land Act 1925 (c. 18), Sched. III(xiv)): see *Re Harrington* 75 L.J. Ch. 460, cited RESERVOIR.

(9) As to riparian rights in a watercourse, see *Baily v. Clark* [1902] 1 Ch. 649; RIPARIAN.

(10) "Natural stream or watercourse": see *Phillimore v. Watford Rural District Council* [1913] 2 Ch. 434, cited STREAM.

Stat. Def., Water Resources Act 1963 (c. 38), s.135(1); Land Drainage Act 1976 (c. 70), s.116, Sched. 5, para. 2.

See DRAIN; SPRING; STREAM; WATERS.

WATERS. (1) "If a man grant *aquam suam*, the soile shall not passe, but the pischary within the water passeth therewith" (Co. Litt. 4 b). Cp. POOL.

(2) As to the effect of general words in a conveyance granting "waters, watercourses": see *Wardle v. Brocklehurst* 29 L.J.Q.B. 145; *Sanderson v. Berwick-upon-Tweed* 13 Q.B.D. 547.

(3) "Waters," in Medicines Stamp Act 1812 (c. 150), Sched., as affected by the repeal in Stamps Act 1833 (c. 97), s.20; see *A.-G. v. Lamplough* 3 Ex. D. 214.

(4) "All other waters wherein salmons be taken," 2 Westm., c. 47; the Thames is not included herein (2 Inst. 478).

(5) A reservoir, situate in a salmon fishery district and stocked with trout for the purpose of being fished, is not "waters . . . frequented by trout or char," within Freshwater Fisheries Act 1878 (c. 39), s.6; such "waters" must be tributaries of a river, or must communicate with it by something more than a valve (*Stead v. Nicholas* [1901] 2 K.B. 163). See TRIBUTARY. See BRITISH WATERS; INLAND WATERS.

(6) Subterranean waters: see DEFINED CHANNEL; *Acton v. Blundell* 13 L.J. Ex. 289, 302, and *Chasemore v. Richards* 7 H.L. Ca. 349, cited INJURY. See also *Bradford v. Ferrand* [1902] 2 Ch. 655, cited DEFINED CHANNEL; cp. RIVER; STREAM; WATERCOURSE.

"Inland waters": see INLAND WATERS.

Stat. Def., Land Drainage Act 1930 (c. 44), s.41(6); Diseases of Fish Act 1937 (c. 33), s.10, as amended by Diseases of Fish Act 1983 (c. 30), s.4(3); Land Drainage Act 1976 (c. 70), s.27(4).

See NAVIGABLE; TERRITORIAL WATERS; TIDAL WATER; WATER.

WATERWAY. Stat. Def., National Parks and Access to the Countryside Act 1949 (c. 97), s.114(1).

WATERWORKS. (1) In Public Health Act 1875 (c. 55), ss.4, 52, "waterworks" meant works for the supply of water to persons who required it; and did not include works for obtaining water for the use only of a local authority, *e.g.* for flushing sewers (*West Surrey Water Co. v. Chertsey* [1894] 3 Ch. 513); see also SUPPLY. In s.52, "waterworks" meant new waterworks; the section did not apply to additions, or improvements in, existing works (*Cleveland Waterworks Co. v. Redcar* [1895] 1 Ch. 168), unless the extension was into a new district (*Huddersfield v. Ravensthorpe* [1897] 2 Ch. 121).

(2) Value of land to be compulsorily acquired for waterworks, *e.g.* a reservoir: see *Re Lucas and Chesterfield Water Board* [1909] 1 K.B. 16.

Stat. Def., Waterworks Clauses Act 1847 (c. 17), s.3; London Building Act 1930 (c. clviii), s.4.

See SUPPLY.

WAVESON. “Such goods as, after shipwreck, do appear swimming upon the water” (Jacob). See FLOTSAM.

WAY. (1) “There be three kinde of wayes, whereof you shall reade in our ancient bookes. First a foot way which is called *iter, quod est jus eundi vel ambulandi hominis*; and this was the first way.

“The second is a foot way and horse way, which is called *actus ab agendo*; and this vulgarly is called packe and prime way, because it is both a foot way, which was the first or prime way, and a packe or drift way also.

“The third is *via* or *aditus*, which contains the other two, and also a cart way, etc., for this is *jus eundi, vehendi, et vehiculum et jumentum ducendi*; and this is twofold, viz. *regia via*, the king’s highway for all men, *et communis strata*, belonging to a city or towne, or betweene neighbours and neighbours. This is called in our bookes *chimin*, being a French word for a way, whereof cometh *chiminage, chiminagium*, or *chimmagium*, which signifieth a toll due by custome for having a way through a forest; and in ancient records it is some time also called *pedagium*” (Co. Litt. 56 a). See also *Termes de la Ley, Chimin*; 3 Cru. Dig. Title 24.

(2) Besides the ways enumerated by Coke there may be a driftway or way for driving cattle, which is not necessarily included in a carriage or horse way (*Ballard v. Dyson* 1 Taunt. 279; see thereon *per* Pearson J., *Serff v. Acton* 31 Ch. D. 683).

(3) (a) When in a deed relating to mines there is a grant of “a free and convenient way” (*Senhouse v. Christian* 1 T.R. 560), or of a “sufficient wayleave” (*Dand v. Kingscote* 9 L.J. Ex. 279; 6 M. & W. 174), or, probably, of a “necessary wayleave,” or the like (same case), or to “convey coals” (*Bishop v. North* 12 L.J. Ex. 362), the grantee, *prima facie*, may for his better accommodation make waggon-roads or tram-roads on the site over which such a right of way extends. He may even make a railroad if, in the deed, there be a clause requiring him to compensate for damage, and if such a road would not be a nuisance or a source of danger (*Bishop v. North* *sup.*).

(b) Under the words “sufficient way-leave,” a party is not confined to such description of way as was in use at the time of the grant (*Dand v. Kingscote* *sup.*).

Permanent way: see PERMANENT.

Stat. Def., London Building Act 1930 (c. clviii), s.4.

See ABANDONMENT; BY WAY OF; GATEWAY; NON-USER; USUAL WAY; UNDER WAY; WAYS; BRIDLE-PATH; CAUSEWAY; FOOTPATH; HIGHWAY; PUBLIC HIGHWAY; PUBLIC WAY; ROADWAY; RIGHT OF WAY.

WAYFARER. As regards his right to accommodation at an inn, and the innkeeper’s rights against him, “wayfarer” seems synonymous with “traveller”: see hereon judgment of Wills J., *Orchard v. Bush* [1898] 2 Q.B. 284, cited GUEST.

WAY-GOING. See AWAY-GOING.

WAYLEAVE. See WAY; *Whitwham v. Westminster Brymbo Co.* [1896] 2 Ch. 538; *North Eastern Railway v. Hastings* [1900] A.C. 260. See Finance Act 1910 (c. 35), s.24.

WAYS. (1) “The words ‘with all ways thereunto appertaining,’ strictly and properly speaking, never carry a right of way over another tenement of the grantor; and for

this simple reason—when a man who is owner of two fields walks over one to get to the other, that walking is attributable to the ownership of the land over which he is walking, and not necessarily to the ownership of the land to which he is walking” (*per Fry J.*, *Bolton v. Bolton* 11 Ch. D. 970, citing *Harding v. Wilson* 2 B. & C. 96; *Barlow v. Rhodes* 2 L.J. Ex. 91). And, accordingly, where there was a contract to sell premises “with the appurtenances,” the vendor was entitled to have in the conveyance a limitation of the general words of Conveyancing Act 1881 (c. 41), s.6 (see Law of Property Act 1925 (c. 20), s.62), so as to grant no more than he had bargained to sell (*Bolton v. Bolton* *sup.*; *Re Peck and London School Board* [1893] 2 Ch. 315); and, generally, he would be entitled to have excluded therefrom the words “reputed” and “enjoyed” (*Re Peck and London School Board*). See also *Re Hughes and Ashley* [1900] 2 Ch. 595).

(2) But a grant, by the owner of two closes of land, of one of them, “together with all ways now used therewith,” will pass to the grantee a right of way over a clearly defined path, constructed over the other close, and then actually used as the mode of access to the close granted, even though the path did not exist prior to the unity of possession (*Barkshire v. Grubb* 18 Ch. D. 616; see also *Thomson v. Waterlow* L.R. 6 Eq. 36; *Langley v. Hammond* L.R. 3 Ex. 161; *Kay v. Oxley* L.R. 10 Q.B. 360; *Bayley v. Great Western Railway* 26 Ch. D. 434; *Brown v. Alabaster* 37 Ch. D. 490). See THEREWITH; RIGHT; RIGHT OF WAY.

(3) Ways “now or heretofore held or enjoyed”: see *Roe v. Siddons* 22 Q.B.D. 224.

(4) Ways “occupied or enjoyed with” (Law of Property Act 1925 (c. 20), s.62): see RIGHT; *Clark v. Barnes* [1929] 2 Ch. 368.

(5) In Employers’ Liability Act 1880 (c. 42), s.1(1), “ways” meant “all kinds of material things which may be used in, or in connection with, the business of the employer” (*per Field J.*, *McGiffen v. Palmer’s Shipbuilding Co.* 10 Q.B.D. 5). Planks placed for walking over a hole in ground where machinery was being erected was such a “way” (*Bromley v. Cavendish Spinning Co.* 2 T.L.R. 881). But it was not necessary that there should be a defined passage; any vacant space on the premises where the employer’s business was being done which was ordinarily traversed by workmen when engaged on that business, was such a “way” (*Willets v. Watt* [1892] 2 Q.B.D. 92). See also *Wood v. Dorrall* 2 T.L.R. 550; *McShane v. Baxter* 7 T.L.R. 58; *Conway v. Clemence* 2 T.L.R. 80, cited PLANT; WORKS. See also DEFECT.

(6) A collection of inflammable gas in a mine was a defect in the “ways and works” of the employer within Employers’ Liability Act 1880 (c. 42), s.1: see *Nimmo v. Connell* [1924] A.C. 595.

(7) “Ways” in a mining lease: see *Beaufort v. Bates* 31 L.J. Ch. 481.

(8) “Ways” in a Turnpike Act includes railways (*Rowe v. Shilson* 4 B. & Ad. 726).

WE. A promissory note given as consideration for the purchase of shares of a corporation and containing the words “we promise to pay” creates a joint obligation under English common law on the part of all persons signing the note, but under Quebec law the obligation is joint and several pursuant to the provisions of art. 1105 of the Civil Code, inasmuch as the note is being given in connection with a commercial transaction (*Kaufman v. Weissfeld* [1972] Que. C.A. 462).

WEAKNESS. Accident caused by weakness: see CAUSED BY.

WEAPON. Offensive weapon: see **OFFENSIVE**.

“Weapon of offence.” Stat. Def., Theft Act 1968 (c. 60), s.10.

WEAR. See **WEIR**.

WEAR AND TEAR. (1) (a) “These words (‘reasonable wear and tear’) no doubt, include destruction to some extent—destruction of surfaces by ordinary friction—but we do not think they include total destruction by a catastrophe which was never contemplated by either party”; even though such catastrophe may have resulted from the reasonable use of the premises demised (*per* Lindley J., delivering the judgment, *Manchester Bonding Warehouse Co. v. Carr* 5 C.P.D. 507).

(b) “If those words, ‘fair wear and tear and damage by tempest excepted’ were not there, any dilapidations found at any time, or at the end of the term, by reason of the wear and tear—*e.g.* the wearing out of the walls and floors of a public-house from the constant traffic and so forth—the lessee would be liable to replace, and if, unfortunately, by a storm his chimney-pot was blown down, or he had his roof broken, he would be bound to put it straight, and restore the place to good and substantial repair” (*per* Kekewich J., *Davies v. Davies* 38 Ch. D. 499). See **WITHOUT IMPEACHMENT OF WASTE**.

(c) In the phrase “reasonable (or fair) wear and tear excepted” neither of the adjectives “reasonable” or “fair” can apply to the elements as a cause of wear and tear. Nor can either word be used as applying to the effects of the elements. The phrase cannot mean a fair amount of resultant wear and tear. The words “reasonable” and “fair” in the phrase only apply to the treatment of the premises by the covenantor (*Taylor v. Webb* [1937] 2 K.B. 283).

(d) Under a covenant by a lessee to deliver up the premises in good and tenantable repair on the expiration of the term, “reasonable wear and tear excepted,” it was held that the tenant was not liable for damage due to the bursting of an outside water pipe which he was under no liability to repair: see *Citron v. Cohen* 36 T.L.R. 560; see also *Haskell v. Marlow* 97 L.J.K.B. 311.

(e) In a covenant to repair by a tenant “fair wear and tear excepted” covers no more than the remedying of things which wear out in the course of reasonable use: it does not cover other damage which might flow from the wear and tear (*Regis Property Co. v. Dudley* [1959] A.C. 370).

(2) The deduction for purpose of income tax under Sched. D, for “wear and tear” (Customs and Inland Revenue Act 1878 (c. 15), s.12), might have been and, *semble*, should have been, not an average annual wear and tear of the three years on which the profits were estimated but the wear and tear during the year immediately preceding the year of assessment (*Cunard S.S. Co. v. Coulson* [1899] 1 Q.B. 865). See also *Inland Revenue Commissioners v. Great Wigston Gas Co.* 62 T.L.R. 623.

(3) “Wear and tear” (Income Tax Act 1952 (c. 10), s.298(1), now Capital Allowances Act 1968 (c. 3), s.42(1)) means “depreciation” (*Macsaga Investment Co. v. Lupton* [1967] Ch. 1016).

(4) The case of *Bigge v. Bigge* (9 Jur. 192) illustrates the distinction between “wear” and “tear.” In that case a testator had, by handling, worn his will in two—a very different thing from his having torn it in two—so there was no revocation by “tearing” within Wills Act 1837 (c. 26), s.20. See **TEAR**.

“Diminished value by reason of wear and tear”: see **DIMINISH**; see also **REPAIR**; **REASONABLE**.

WEARING APPAREL. Bequest of “all my goods and wearing apparel of what nature and kind soever, except my gold watch”; held, that not only the testatrix’s clothes but also her personal ornaments passed (*Crichton v. Symes* 3 Atk. 61).

WEATHER WORKING DAY. (1) “Weather working day” means a day when work is not prevented by the weather; in a charterparty means a day on which the weather does not prevent loading or unloading (*Dampskibsselskabet Botnia A/S v. Bell & Co.* [1932] 2 K.B. 569); to load so much “per weather working day,” in a charterparty means that the charterer is to be charged half a day when substantially half a day’s work can be done, and a whole day when substantially a full day’s work (though not amounting to 12 hours) can be done; less than half a day is not to be considered (*per Russell C.J., Branckelow S.S. Co. v. Lamport* [1897] 1 Q.B. 570). See further *Bennett v. Brown* [1908] 1 K.B. 490; *British & Mexican Shipping Co. v. Lockett* [1911] 1 K.B. 264, cited **WORKING DAYS**.

(2) What one has to look at in determining the meaning of the expression “weather-working day” in a charterparty is the working hours and not the non-working hours. It means that the working day must be reduced by the time during which working is suspended by reason of the weather (*Alvion Steamship Corporation Panama v. Galban Lobo Trading Co.* [1955] 1 Q.B. 430).

(3) The status of a day as being a weather working day, wholly or in part or not at all, is determined solely by its own weather, and not by extraneous factors, such as the actions, intentions and plans of any person (*Compania Naviera Azuero v. British Oil and Cake Mills* [1957] 2 Q.B. 293).

(4) A mere threat of bad weather which affects the safety of a vessel in the particular place in which she is lying, but not the actual work of unloading, will not prevent a day from being a “weather working day” (*Compania Crystal de Vapores v. Herman & Mohalta* [1958] 2 Q.B. 196).

(5) A “weather working day” is a working day which is not unavoidable because of bad weather, though local custom at a port might require a different meaning (*Reardon Smith Line v. Ministry of Agriculture, Fisheries and Food; Carlton Steamship Co. v. Same; Cape of Good Hope Motor Ship Co. v. Same* [1963] A.C. 691).

See **WORKING DAYS**.

WEEK. (1) Though a “week” usually means any consecutive seven days, it will sometimes be interpreted to mean the ordinary notion of a week reckoning from Sunday to Sunday (*Bazalgette v. Lowe* 24 L.J. Ch. 368, 416). See also *Cadzow Coal Co. v. Gaffney* 38 Sc. L.R. 40, cited **WEEKLY**.

(2) And, probably, a “week” usually means seven clear days—thus, where a statute provided that notice of appeal should be given “within one week” before such appeal was to be heard, and notice was given on the 22nd for the 29th, it was held that the notice was insufficient (*R. v. Sweeney* 2 Ir. L.R. 278). Cp. **FORTNIGHT**. See further *Weston v. Fidler* 88 L.T. 769, distinguished *Newman v. Slade* [1926] 2 K.B. 328.

(3) A theatrical engagement to employ at so much “per week” may be shown, by usage, to mean “per week during every week that the theatre is open” (*Grant v. Maddox* 16 L.J. Ex. 227). See further as to construction of such an engagement, *Mapleson v. Sears* 56 S.J. 54.

(4) As to the calculation of “week’s pay” for the purposes of Sched. 1, para. 5, of the Redundancy Payments Act 1965 (c. 62), see *Amalgamated Asphalte Companies v. Dockrill* [1972] I.T.R. 198 and *Mole Mining v. Jenkins (H.G.)* [1972] I.T.R. 340.

“Week’s pay” does not include benefits in kind nor sums paid as reimbursement of expenses (*S. & U. Stores v. Wilkes* [1974] I.C.R. 645).

Stat. Def., Employment Protection (Consolidation) Act 1978 (c. 44), s.153; Betting and Gaming Duties Act 1981 (c. 63), s.20; Social Security and Housing Benefits Act 1982 (c. 24), s.26.

WEEK-DAY. “Week-days other than Saturdays,” within s.1, Shops (Early Closing) Amendment Act 1921 (c. 60): see *London County Council v. Gainsborough* [1923] 2 K.B. 301. Cp. now Shops Act 1950 (c. 28), s.6.

Stat. Def., Licensing Act 1961 (c. 61), s.8(6); Representation of the People Act 1983 (c. 2), Sched. 1, para. 2(3).

See HOLIDAY.

WEEKLY. (1) As used in a building contract, parol evidence is admissible to show that, by the usage of the building trade, “weekly accounts” of extras means accounts of the day-work only, and does not extend to work capable of being measured (*Myers v. Sarl* 30 L.J.Q.B. 9).

(2) “In the Workmen’s Compensation Acts the words ‘weekly earnings’ show that the legislature intended that the court should ascertain what, under the circumstances of employment actually prevailing during the period for which the average is taken, would be the remuneration earned by the workman in a ‘normal week’” (*per* Fletcher Moulton L.J., in *Perry v. Wright* [1907] 1 K.B. 456). See also *Penn v. Spiers & Pond* [1908] 1 K.B. 766, cited EARNINGS; *Twidale v. London & North Eastern Railway* [1925] 2 K.B. 455.

(3) (a) “Weekly payment,” in para. 17, Sched. I, Workmen’s Compensation Act 1906 (c. 58), included every weekly payment which might be received under para. 16: see *Carlton Main Colliery Co. v. Clawley* [1917] 2 K.B. 691. See further *Tarr v. Cory Bros & Co.* [1917] 2 K.B. 774; *Wilson v. Baird* [1923] S.C. 164; *Wolseley Motors v. Sharp* 18 B.W.C.C. 15.

(b) “Weekly payments,” in s.14, Workmen’s Compensation Act 1923 (c. 42), were not confined to weekly payments assessed under an award or recorded agreement, but included weekly payments made voluntarily or under an unrecorded agreement: see *Pudney v. France, Fenwick & Co. Ltd.* [1925] 1 K.B. 346.

(c) An order in execution of a statutory power enabling the order of “weekly payments” may direct that the first payment be made before the expiration of a week from the making of the order (*R. v. Weston* Raym. Lord, 1197).

(4) A weekly tenancy does not come to an end at the end of each week; it needs some notice to determine it (*Bowen v. Anderson* [1894] 1 Q.B. 164). See hereon REASONABLE.

“Greater weekly sum”; see GREATER.

“Weekly close season”: see ANNUAL CLOSE SEASON.

See AVERAGE WEEKLY EARNINGS.

WEIGH. “‘To weigh’ means to affect to ascertain weight by means of balancing—using what may be properly called a balance—although the instrument be fraudulently used. Still, one might weigh a thing and sell it, and yet not sell it by its weight. There would be a weighing, and then a selling otherwise than by weight” (*per* Darling J., *Cox v. Bleines* [1902] 1 K.B. 670, cited BY WEIGHT).

WEIGHING. A “correct weighing instrument,” as used in a bye-law made under s.28 of the Weights and Measures Act 1889 (c. 21) meant one which would, “at one

weighing," correctly weigh any sack of coal in the retail dealer's vehicle (*Crick v. Nicholls* [1905] 1 K.B. 501).

Weighing machine "false or unjust": see UNJUST; USING; WILFULLY.

"Weighing or measuring equipment." Stat. Def., Weights and Measures Act 1963 (c. 31), s.58(1).

See WEIGHT; cp. MEASURING.

WEIGHT. (1) Neither scales nor weighing machines are weights or measures (*Thomas v. Stephenson* 22 L.J.Q.B. 258). See WEIGHING; cp. MEASURE.

(2) Goods shipped from abroad to England to be paid for according to "weight," connotes the net English weight (*Geraldes v. Donison* Holt N.P. 346).

(3) "Weight of the mineral gotten" (s.17, Coal Mines Regulation Act 1872 (c. 76)); see *Brace v. Abercarn Co.* [1891] 2 Q.B. 699, cited MINERAL GOTTEN.

(4) "Weight of vehicle and coal" (Weights and Measures Act 1889 (c. 21), s.22(1)), see *Beardsley v. Pike* 90 L.T. 652, cited PREVIOUSLY.

(5) "Timber at measurement weight": see *Great Western Railway v. Caswell* [1904] 2 K.B. 508.

(6) "Weight unladen" see Roads Act 1920 (c. 72), s.8.

"Excessive weight": see EXTRAORDINARY TRAFFIC.

"Net weight delivered": see DELIVERED.

"Weights and Measures Acts 1878 to 1893": see Sched. 2, Short Titles Act 1896 (c. 14).

See ACTUAL WEIGHT; BY WEIGHT; COIN; CORRECT; DEAD WEIGHT; ENGLISH; STANDARD. Cp. MEASURE.

WEIGHT UNKNOWN. (1) Where a master of a ship signs for goods "weights unknown," the instrument is open to explanation (*Geraldes v. Donison* Holt N.P. 347). See CLEAN BILL OF LADING; CONTENTS UNKNOWN.

(2) "Not responsible for weight" (*Bradley v. Dunipace* 31 L.J. Ex. 210; 32 *ibid.* 22, on which case see *Parsons v. New Zealand Co.* [1900] 1 Q.B. 714, cited CONCLUSIVE EVIDENCE), or "weight unknown" (*The Emilien Marie* 44 L.J.P.D. & A. 9), gives the shipowner, not an absolute, but a qualified exoneration as regards the weight.

(3) "Weight, measurement, contents and value unknown" (in bill of lading): see *New Chinese Antimony Co. Ltd. v. Ocean S.S. Co. Ltd.* [1917] 2 K.B. 664.

(4) "Weight, quality, condition and measure unknown," in bill of lading: see *The Tromp* [1921] P. 337.

(5) "Weight, measure, quality, contents and value unknown" (in a charterparty): see *Hogarth Shipping Co. v. Blyth, Greene, Jourdain & Co.* [1917] 2 K.B. 664.

WEIR. (1) "'Weare,' or 'were,' a stank or great dam in a river, accommodated for the taking of fish, or to convey the stream to a mill" (Cowel). See further *Williams v. Wilcox* 7 L.J.Q.B. 229; *Hanbury v. Jenkins* [1901] 2 Ch. 401.

(2) An unlegalised erection of a weir may be restrained (*Barker v. Faulkner* [1898] W.N. 69).

See GURGES; KIDEL; cp. WERE.

WELCHER. "Welcher," without special damage, is not slander (*Blackman v. Bryant* 27 L.T. 491), unless the jury are satisfied that the word is used in the sense of "one who takes money from those who make bets with him intending to keep

such money for himself and never to part with it again" (*Williams v. Magyer*, *The Times*, March 1, 1883).

WELFARE. (1) The welfare of a child—to be considered as regards custody—"is not to be measured by money only, nor by physical comfort only. 'Welfare' must be taken in its widest sense. The moral and religious welfare of the child must be considered, as well as its physical well-being. Nor can the ties of affection be disregarded" (*per* Lindley L.J., *Re McGrath* [1893] 1 Ch. 143, cited and adopted in *Re Gyngall* 62 L.J.Q.B. 564). A mother who has been divorced because of her adultery is not necessarily unfit to have the custody of the child (*Allen v. Allen* [1948] 2 All E.R. 413).

(2) "Welfare" (Adoption Act 1958 (c. 5), s.7(1)) means "benefit" (*Re A. (An Infant)* [1963] 1 W.L.R. 231).

(3) A gift for "work for the welfare of cats and kittens needing care and attention" is a valid charitable gift (*Re Moss* [1949] 1 All E.R. 495).

Stat. Def., Matrimonial Causes Act 1973 (c. 18), s.43(6).

WELL AND TRULY. "Well and truly administer": see **ADMINISTER**.

"Well and truly" execute a building contract, and liability of surety thereon: see *Kingston v. Harding* [1892] 2 Q.B. 494.

WELL-BEING. Where land was to be used for the promotion of religious, social and physical "well-being" of certain persons, "well-being" meant primarily a happy or contented state (*I.R.C. v. Baddeley* [1955] A.C. 572).

WELL KNOWN. See **PRECATORY TRUST**.

"'As the court well knew'; that is to say, 'had judicial knowledge' " (*per* Willes J., *London v. Cox* L.R. 2 H.L. 277).

WELL LIGHTED. A "well lighted" room "is obviously a comparative expression; it may mean well lighted taking the average of rooms, or it may mean well lighted taking the average of the opinions of the people of the present day as to the quantity of light that is required" (*per* Williams L.J., *Kine v. Jolly* 74 L.J.K.B. 182; see also **LIGHT**).

WELL SECURED. An annuity described in particulars of sale as "well secured," e.g. on the once existing Waterloo Bridge tolls, is not thereby represented as being on a good money-value security, but merely that its legal obligation has been effectually perfected (*Coverley v. Burrell* 2 Starkie, 295). See **SECURED**; **SECURITY**.

WELL SUPPLIED. When property is sold under a representation that it is "well supplied with water," that means that the property is "supplied with water by a spring rising in it, or by a running stream passing through or into it, and so supplied as a matter of right, belonging or incident to the property, without rent or payment of any kind for the water or its use" (*per* Knight-Bruce L.J., *Leyland v. Illingworth* 29 L.J. Ch. 614).

WELSH. A gift for the establishment and maintenance of an institute in London for promoting the moral, social, spiritual, and educational welfare of Welsh people and fostering the study of the Welsh language and of Welsh history, literature, music and art was held not to be charitable (*Williams' Trustees v. Inland Revenue Commissioners* [1947] A.C. 447).

WENSLEYDALE'S (LORD) ACT. Marriage Confirmation Act 1860 (c. 24); see also PARKE'S ACT.

WERE. "*Were* is an old Saxon word, sometime written *wera*, and signifieth the price of the life of a man, *estimatio capitis*, that is, so much as one paid for the killing of a man" (Co. Litt. 287 b). "*Wera* or *were* sometimes signifieth americiament" (*ibid.* 127 a).

Cp. WEIR.

WESTBURY'S (Lord) ACTS. Domicile Act 1861 (c. 121); Bankruptcy Act 1861 (c. 134); Land Registry Act 1862 (c. 53); Fine Arts Copyright 1862 (c. 68); Companies Act 1862 (c. 89); Clerks of the Peace Removal Act 1864 (c. 65); Improvement of Land Act 1864 (c. 114); Liquidation Act 1868 (c. 68).

WESTMINSTER. (1) The Statutes of Westminster are the Acts passed at the three parliaments of Edward I held at Westminster, *i.e.* Westm. 1, A.D. 1275, consisting of 51 chapters; Westm. 2, A.D. 1285, consisting of 50 chapters; and Westm. 3, A.D. 1290, consisting of 3 chapters. Of these, c. 1, Westm. 2 (generally now cited as 13 Edw. I, c. 1) is the famous statute *De Donis*, or, more fully, *De Donis Conditionalibus* (those being its commencing words), which is the origin of our law of estates tail—"tenant in fee tail is by force of the statute of Westm. 2, c. 1, for, before the said statute, all inheritances were fee simple" (Litt. s.13; see further *Jordan v. Roach* 32 Miss. 603; 2 Bl. Com. 109 *et seq.*; Wms. R.P. Pt. 1, ch. 2; Goodeve, (9th ed.), 14). Cp. QUIA EMPTORES.

(2) The Statute of Westminster 1931 (c. 4), regulates the relations between the United Kingdom and the Dominions.

WET. (1) A wet dock "may not unreasonably be held, according to the definitions in the dictionaries, to include a place which admits ships and then excludes the tide if required" (*per Barnes J.*, *The Mercedes de Larrinaga* [1904] P. 229).

(2) Full and complete cargo of wet woodpulp: see *Isis S.S. Co. v. Bahr* [1899] 2 Q.B. 364, affirmed in House of Lords [1900] A.C. 340.

WHARF. (1) "'Wharfe' is a word used in the statute of 1 Eliz., c. 11, and other statutes, and it is a broad place neare to a creek or hithe of water, upon which goods and wares are laid, which are to bee shipt and transported from place to place" (Termes de la Ley). To the same effect are the United States decisions (*Doane v. Broad Street Association* 6 Mass. 334; *Geiger v. Filor* 8 Florida, 332).

(2) So, "wharf," in the definition of "factory," in Workmen's Compensation Act 1897 (c. 37), was used in its popular sense of "a place contiguous to water, used for the purpose of loading and unloading goods, and over which goods pass in loading and unloading. It is essential to a wharf that goods should be in transit over it. The primary idea is that it is a place used, not for storing goods, but in the process of their transit to or from water" (*per Collins L.J.*, *Haddock v. Humphrey* [1900] 1 Q.B. 609). See this case for an example of a yard nearly adjoining but not part of a "wharf" (*Haddock v. Humphrey* distinguished in *Kenny v. Harrison* [1902] 2 K.B. 168). See further *Ellis v. Cory* 71 L.J.K.B. 72. See also *Owens v. Campbell* [1904] 2 K.B. 64, cited IN OR ABOUT; DOCK; ACTUAL USE OR OCCUPATION.

(3) "Wharf" in a Rating Act: see *R. v. Regent's Canal Co.* 6 B. & C. 720.

(4) "Wharf or quay" (Docks Regulations 1934 (No. 279), reg. 1) does not include a gantry or warehouse (*Jarvis v. Hay's Wharf* [1967] 1 Lloyd's Rep. 329).

Sufferance wharf: see SUFFERANCE.

Stat. Def., Explosives Act 1875 (c. 17), s.108; Merchant Shipping Act 1894 (c. 60), s.492; Thames Conservancy Act 1894 (c. clxxxvii), s.3; Harbours Act 1964 (c. 40), s.57.

See DOCK; FACTORY; PUBLIC WHARF; QUAY.

WHARFAGE. (1) "Wharfage, or keyage, a duty for the pitching or lodging of goods upon a wharf" (Hale, *De Portibus Maris*, ch. 6).

(2) "A duty for wharfage and cranage cannot be due where the party has not had use of the wharf or crane. Wharfage is due for landing on the wharf" (*per* Mansfield C.J., *Stephen v. Costor* 3 Burr. 1415, cited by Dunedin L.P., *Seafield v. MacBrayne* 43 Sc. L.R. 711, who says that wharfage, "according to the ordinary use of the word, is a rate for things landed on the wharf, and not for a ship merely touching at it").

WHARFINGER. "Is he that owns or keeps a wharfe, or hath the oversight or management of it" (Cowel). See hereon *Chattock v. Bellamy* 64 L.J.Q.B. 250; *Tredegar Iron Co. v. S.S. Calliope* [1891] A.C. 11.

See WHARF.

WHAT IS LEFT. See LEFT; REMAIN; RESIDUE.

WHATEVER. "Any cause whatever": see ANY. See *Borthwick v. Elderslie S.S. Co.* [1905] A.C. 93, cited ANY.

"All expenses whatever": see EXPENSES.

"Any purpose whatever": see AVAILABLE.

"Whatever remains": see REMAIN; WHAT IS LEFT.

See WHATSOEVER.

WHATSOEVER. (1) "Whatsoever," as a rule, excludes any limitation or qualification, and implies that the genus to which it relates is to be understood in its utmost generality (*per* Fry L.J., *Duck v. Bates* 13 Q.B.D. 851). The same learned judge (in construing a reservation in a conveyance in fee of "all mines of coal, culm, iron, and all other mines and minerals whatsoever, except stone quarries") said, "Those words are intended to mean that which they express; and where you find the word 'whatsoever' following upon certain substantives, it is often intended to repel, and in this case does effectually repel, the implication of the so-called doctrine of *ejusdem generis*, which I think has often been urged for the sake of giving, not the true effect to the contracts of parties, but a narrower effect than they were intended to have" (*Jersey v. Neath* 22 Q.B.D. 565, 566); that judgment was cited by Loreburn C., in *Larsen v. Sylvester* [1908] A.C. 295, in which case it was held that the *ejusdem generis* rule did not apply to an exception in a charterparty which mutually exempted the parties from liability for "any other unavoidable accidents or hindrances of what kind soever beyond their control." See further *per* Hardwicke C., *Tilley v. Simpson* 2 T.R. 659, n.; *per* Williams J., *Perry v. Davis* 3 C.B.N.S. 777. But see *Fish v. Jesson* 2 Vern. 114, cited DEMAND.

(2) "The insertion of the word 'whatsoever' has been held, in several of the cases to which we have been referred, to make a great difference in the interpretation of an exempting clause, and to enlarge its operation" (*per* Cockburn C.J., *R. v. Kent Justices* 29 L.J.M.C. 193).

(3) “I devise all my goods and chattels, moneys, debts, and whatsoever else I have in the world not before disposed of” to A; held, to pass an estate in fee (*Hopewell v. Ackland* 1 Salk. 239). So, where the words were “whatever I may die possessed of” (*Davenport v. Coltman* 11 L.J. Ex. 114; *Evans v. Jones* 46 L.J. Ex. 280). See hereon 2 Jarm. (8th ed.) 986.

(4) But sometimes even such a wide phrase as “whatsoever and wheresoever” will receive a restricted meaning: see *Johnson v. Telford* 1 Russ. & My. 244; *Maxwell v. Maxwell* 22 L.J. Ch. 43.

(5) So, if a condition of sale enables a vendor to rescind if any objection be made “in respect of title or of any other matter or thing whatsoever, which the vendor shall be unwilling” to satisfy, that does not apply where the vendor, having only the last remaining month of a term, purports to sell the fee simple (*Bowman v. Hyland* 8 Ch. D. 588, distinguished *Re Deighton and Harris* [1898] 1 Ch. 458, cited RELATING). See further *Re Jackson and Haden* [1905] 1 Ch. 603, cited TITLE; LITIGATION.

(6) The use of the word “whatsoever” in the expression “or by any other cause whatsoever” in a charterparty had the effect of excluding the application of the *ejusdem generis* rule (*Sidermar S.p.A. v. Apollo Corporation*; *The “Apollo”* [1978] 1 Lloyd’s Rep. 200).

See WHATEVER; WHERESOEVER; see further *Mirams v. Our Dogs Co.* [1901] 2 K.B. 564, cited PROPERTY.

WHEELBARROW. “Carriages to be *ejusdem generis* with ‘wheelbarrow or such like carriage,’ would have to consist of what might come within that class in the contemplation of the legislature at the time the Act was passed” (*per* Alverstone C.J., *Simpson v. Teignmouth Bridge Co.* [1903] 1 K.B. 415; see further CARRIAGE).

WHEN. (1) “When” usually creates a CONDITION precedent (*Jolly v. Hancock* 7 Ex. 820).

(2) Where there is a testamentary gift to A, “if,” or “when,” or “provided,” or “in case,” or “so soon as” (phrases which are synonymous, *Shrimpton v. Shrimpton* 31 Bea. 425; see also *Goss v. Nelson* 1 Burr. 227; *Hanson v. Graham* 6 Ves. 243), a certain event happens—*e.g.* attaining a stated age—such a gift, standing unaffected by the context, confers only a contingent interest, and requires the happening of the event to give it validity. But with the aid of a context such words may, without difficulty, not defer the vesting of the subject-matter of the gift, but merely refer to the futurity of its possession (2 Jarm. (8th ed.) 1360 *et seq.*; *Boraston’s Case* 3 Rep. 19 a; *Hanson v. Graham* 6 Ves. 239; *Phipps v. Ackers* 3 Cl. & F. 703; *Andrew v. Andrew* 1 Ch. D. 410, cited FROM AND AFTER; *Scotney v. Lomer* 29 Ch. D. 535; 31 *ibid.* 380; *Re Wrey Stuart v. Wrey* 30 Ch. D. 507). See further *Re Francis* [1906] 2 Ch. 300, in which case Swinfen Eady J., said, “There is no difference between ‘on his attaining’ and ‘when,’ or ‘if,’ or ‘at’ a stated age; all equally imply contingency.” It has also been said that “‘when’ cannot be considered as so strongly indicating contingency as ‘provided’ and ‘if’ ” (Watson Eq. 1217, and cases there cited).

(3) Where the gift is to a class “who,” or “as,” shall attain a certain age, the rule (nearly universally applied) is to regard the attainment of the age as part of the description of the beneficiary, and to construe the gift as contingent, “upon the ground that no one could claim who could not predicate of himself that he was of the age required” (see Wigram V.-C., *Bull v. Pritchard* 16 L.J. Ch. 185; *Festing v. Allen* 13 L.J. Ex. 74; see further 2 Jarm. (8th ed.) 1371, 1372). But even this construction may yield to a context, *e.g.* “born or to be born in due time” after the decease of

the life tenant (*Muskett v. Eaton* 1 Ch. D. 435; *Lambert v. Parker Cooper, G.*, 143; 2 Jarm. (8th ed.) 1372, 1675 *et seq.*).

(4) Where a legacy is payable out of a specified fund “when got in,” or “when recovered,” or “when received,” the right to interest on it is not suspended or postponed (*Entwisle v. Markland* 6 Ves. 528, n.; *Sitwell v. Bernard* 6 Ves. 520; *Wood v. Penoyre* 13 Ves. 336, 337).

(5) Capital money “when received” (s.21, Settled Land Act 1882 (c. 38)) includes money to arise at a future date (*Re Norfolk* [1900] 1 Ch. 461, cited *IMPROVEMENT*). See Settled Land Act 1925 (c. 18), s.73.

See *AS AND WHEN; ON; SO SOON AS*.

WHENEVER. (1) Where a clause in a lease provides for forfeiture “if and whenever” rent is in arrear, that means as often as the rent shall remain in arrear at any moment of time, and the forfeiture is not waived by a distress which does not yield sufficient to satisfy the rent due (*Shepherd v. Berger* [1891] 1 Q.B. 597). See *IF*.

(2) As to the comprehensiveness of “whenever,” e.g. s.31(6), Summary Jurisdiction Act 1879 (c. 49): see *per* Lord Herschell, *Boulter v. Kent Justices* [1897] A.C. 556, cited *COURT OF SUMMARY JURISDICTION*.

(3) But “whenever it appears” to the county council that a house or room for dancing, music, or such like, “is so defective in its structure” as to be in danger from fire (s.11, Metropolis Management Act 1878 (c. 32)) did not mean “so often as,” but meant that at “whatever time it so appears”; i.e. the notice under the section was to be given once for all “whenever” the council chose, and, when complied with, it was final not only as to the works ordered being required, but also as to those works being sufficient (*St. James’s Hall Co. v. London County Council* [1901] 2 K.B. 251). Cp. *FRONTING*.

(4) Where, by a deed of appointment, certain property was directed to be held on trust for such of the children of the appointor’s two sons, “whenever born,” as should attain the age of 21, and if more than one in equal shares, it was held that the words “whenever born” were quite definite and meant that the class could not close until no further members could be born (*Re Edmondson’s Will Trusts* [1972] 1 W.L.R. 183).

WHERE. (1) “Where there is more than one hatchway,” in Reg. 19, S.R. & O., 1904, No. 1617, meant not where upon any ship there was more than one hatchway, but where the person employed upon the process had used or using or was about to use for the purposes of his employment more than one hatchway: see *Owner v. King & Sons* 39 T.L.R. 22.

(2) “Where the rent payable . . .” (Increase of Rent and Mortgage Interest (Restrictions) Act 1920 (c. 17), s.12(7)) might have meant “in cases in which” but more probably meant “if and so long as” (*Woozley v. Woodall Smith* [1950] 1 K.B. 325).

(3) “Where” (Finance Act 1953 (c. 34), s.20) did not refer to a place. It was used in the sense of “if” or “whenever” (*Davies Jenkins & Co. v. Davies* [1968] A.C. 1097).

WHEREAS. Notwithstanding the doctrine in Co. Litt. 352 b, that a recital doth not conclude “because it is no direct affirmation,” yet if there be a direct affirmation it is none the less positive, and is as effective to work an estoppel, though introduced by a “whereas” (*Bowman v. Taylor* 4 L.J.K.B. 58, and *Smith v. Scott* L.J.C.P. 325, both cited *INVENTED*).

WHEREBY. The word “whereby” in s.461, para. 6 of the Income and Corporation Taxes Act 1970 (c. 10) is equivalent to “by which” and connotes some casual connection, even if of a somewhat loose nature, between the transactions in question and the subsequent receipt of the abnormal dividend (*I.R.C. v. Garvin* [1981] 1 W.L.R. 793).

WHERESOEVER. “Wheresoever” points to locality, and therefore, as regards a testamentary gift, it is “peculiarly applicable to real estate” (*per* *Turner V.-C.*, *Stokes v. Salomons* 20 L.J. Ch. 343).

See **WHATSOEVER**; **WHOSOEVER**.

WHEREUPON. See **THEREUPON**.

WHERRY. “A ‘wherry’ and a ‘lighter’ are in common parlance, boats plying for hire and carrying passengers or goods” (*per* Erle J., *Reed v. Ingham* 23 L.J.M.C. 156); a steam-tug was not a “wherry, lighter, or other craft,” within s.37, Watermen’s and Lightermen’s Act 1827 (c. lxxv) (*ibid.*), nor was a coal brig a “lighter, vessel, barge, or other craft,” within s.4, Regulation of Vend, etc., of Coals Act 1838 (c. ci) (*Blanford v. Morrison* 15 Q.B. 724).

WHETHER. (1) “Whether,” following a general bequest, is a term of enumeration, and does not enlarge or affect the generality (*per* Fry J., *Re Greaves* 23 Ch. D. 313; see further *Re Pickup* 30 L.J. Ch. 278).

(2) The Matrimonial Causes Rules 1937, r. 4(1)(f), provided that a petition should state whether there had been any resumption of cohabitation. This meant “aye” or “no” as to such resumption. If there had been no resumption the negative fact had to be pleaded (*Bishop v. Bishop* [1942] P. 41).

WHICH. (1) See hereon *Miles v. Harrison* 9 Ch. 316.

(2) Read “as,” in *Whateley v. Spooner* 3 K. & J. 542.

(3) “Whichever is the later” (Inheritance (Family Provision) Act 1938 (c. 45), s.1(1)(a)): see *Re Pointer* [1941] Ch. 60.

WHILST. (1) A grant by lease of the use of a thing “whilst” the same remains on the premises reserves to the lessor the right to remove the thing (*Rhodes v. Bullard* 7 East, 116).

(2) Acts said to have been done “whilst” a lunatic was in a person’s care, *semble*, does not amount to an averment that he ever was in such care (*R. v. Pelham* 8 Q.B. 965).

(3) “If and while”: see *Cox v. Truscott* 21 T.L.R. 319, cited **CONCERNED IN**; cp. “during,” *Royce v. Birley* L.R. 4 C.P. 296, cited **HOLD**.

(4) In a comprehensive private motor-car insurance policy, the words “whilst under the influence of intoxicating liquor” connotes a disturbance to the intelligent exercise of the faculties. The word “whilst” has a temporal meaning and does not introduce any requirement of a causal connection between the injury sustained and the state of being under the influence of intoxicating liquor (*Louden v. British Merchants Insurance Co.* [1961] 1 W.L.R. 798).

“Whilst towing”: see **TOWAGE**.

See **DURING**; **REMAIN**.

WHO. See **ATTAIN**; **HAVE**; **LIVING**; **WHEN**.

WHOLE. (1) "A kinsman of the whole blood is he that is derived not only from the same ancestor, but from the same couple of ancestors" (2 Bl. Com. 226). Cp. **HALF-BLOOD**.

(2) "Whole body of justices" (s.8(2), Licensing Act 1904 (c. 23)): see *R. v. Leeds Justices* 76 L.J.K.B. 111, overruled by Licensing Act 1906 (c. 42), s.1.

(3) "Whole of the burden of depreciation" (Finance Act 1937 (c. 54), s.15(1)). A lessee who entered into strict repairing covenants in the common form did not undertake "the whole of the burden of any depreciation of the premises" (*Boarland v. Pirie, Appleton & Co. Ltd.* [1940] 2 K.B. 491).

(4) "Whole case" (Criminal Appeal Act 1968 (c. 19), s.17(1) (a)). Power under this section to refer the whole case includes a power to refer a part of the case (*R. v. Bardoe* [1969] 1 W.L.R. 398).

Whole cause of action: see **CAUSE OF ACTION**.

"Whole circumstances": see **CIRCUMSTANCES**.

"Whole currency": see **CURRENCY**.

(5) "Whole debt" (clause 10, Sched. I, Bankruptcy Act 1914 (c. 59)): see *Re Pawson* [1917] 2 K.B. 527; *Re Maxson* [1919] 2 K.B. 330.

(6) In this case where an Indian father had settled in England with his wife and two daughters leaving two sons in India, and the younger son then applied to enter the U.K., it was held by the Court of Appeal that it could not be said that the "whole family" were settled in England while there was a brother still in India. *Secus* if the older brother had left home and married and thus started his own family (*Harmail Singh v. Vice-President of the Immigration Appeal Tribunal, The Times*, July 12, 1978).

"Whole holiday." Stat. Def., Shops Act 1950 (c. 28), s.22(2)(b).

(7) A testamentary declaration that "the whole income" derived from specified property should be paid to A for life, was an express stipulation within s.7, Apportionment Act 1870 (c. 35) that no apportionment should take place (*Re Meredith* 67 L.J. Ch. 409, cited **EXPRESSLY STIPULATED**).

(8) "The authorities on the point are in conflict, but the view I take is this: (1) Where a legacy is given vesting at a future time, and the 'whole' of the intermediate interest is given to the legatee in any event, then the entire gift, principal and interest, is absolutely devoted to the legatee's use, and vests *in præsentī*; (2) if, on the other hand, the 'whole' of the intermediate interest is 'not' so given, but only some discretionary portion thereof, it cannot be said that the entire gift, principal and interest, is absolutely devoted to the legatee's use, and in such a case the gift does not vest *in præsentī*" (*per* North J., *Re Wintle* [1896] 2 Ch. 719). The gift of the intermediate interest may be either direct or in the form of maintenance, provided it be of the whole interest in any event (*Watson v. Hayes* 9 L.J. Ch. 49); but a direction to apply the "whole" of the intermediate interest "or such part as the trustees may think fit" towards, *e.g.* benefit or maintenance, gives direction, and is not a direction to apply the whole intermediate income in any event, and does not effectuate a vesting in the beneficiary (*Leake v. Robinson* 2 Mer. 363; *Re Grimshaw* 11 Ch. D. 406; *Dewar v. Brooke* 14 Ch. D. 529; *Re Wintle* *sup.*, dissenting from *Fox v. Fox* L.R. 19 Eq. 286; *Re Sanderson* 26 L.J. Ch. 804; *Re Stanger* 60 L.J. Ch. 326; 2 Jarm. (8th ed.) 1402). Cp. **RENTS AND PROFITS**. But *Fox v. Fox* (*sup.*) was approved by Court of Appeal in *Re Turney* ([1899] 2 Ch. 739) and was followed by Neville J., *Re Williams* ([1907] 1 Ch. 180), who regarded *Re Wintle* (*sup.*) as of doubtful authority; *Fox v. Fox* and *Re Williams* were followed in *Re Ussher* [1922] 2 Ch. 32. See

further *Re Andrew's Trust* [1905] 2 Ch. 48, in which last case *Re Sanderson* (sup.) was cited and its principles applied, but so that (on the facts) the beneficiaries were regarded as the absolute owners.

(9) "Whole of his interest" (Income Tax Act 1952 (c. 10), s.314(4), now Capital Allowances Act 1968 (c. 3), s.68(4)). A taxpayer who settles land and at the same time takes a lease back from the trustees does not transfer the "whole of his interest" in that land to some other person, within the meaning of this section (*Sargaison v. Roberts* [1969] 1 W.L.R. 951).

• "Whole means and estate": see MEANS.

(10) "Whole of the said mine": see *Watson v. Charlesworth* [1905] 1 K.B. 74, cited WIN.

(11) "Whole reach or burthen of the vessel": see *Weir v. Union S.S. Co.* [1900] 1 Q.B. 28, cited CLEAR.

(12) In an agreement for personal service, a negative obligation will not be enforced by injunction unless there be an express stipulation; not even where the employee contracts to give his "whole time" to his employer's service (*Whitwood Co. v. Hardman* [1891] 2 Ch. 416, overruling *Montague v. Flockton* L.R. 16 Eq. 189), or that he will "act exclusively" for his employer (*Mutual Reserve Association v. New York Insurance* 75 L.T. 528). But where the contract is not one of personal service, but is, e.g. one to take from the contractee "the whole of the electric energy required," that imports a negative obligation not to take energy from any other supplier, an obligation which may be enforced by injunction (*Metropolitan Electric Supply Co. v. Ginder* [1901] 2 Ch. 799, cited UNDUE PREFERENCE, applying *Catt v. Tourle* 4 Ch. 654, cited EXCLUSIVE RIGHT, and distinguishing *Fothergill v. Rowland* L.R. 17 Eq. 132).

(13) "Whole time employment." A person was not in a landlord's whole time employment, within s.5(1), Increase of Rent, etc., (Restrictions) Act 1920 (c. 17), unless he was not only engaged but actually working for the landlord: see *Spencer v. Fox* 91 L.J.K.B. 929.

(14) "Whole-time employee" (Local Government Superannuation Regulations 1974 (No. 520), reg. A3(1)). In deciding whether a retained fireman was a "whole-time employee" within the meaning of this regulation regard had to be made to the hours in each week he was contractually required to be available on call. So that a fireman who was on call for more than 30 hours was a whole-time employee, notwithstanding that he had attended at the fire station for less than 30 hours each week (*Suffolk County Council v. Secretary of State for the Environment* [1984] I.C.R. 882).

(15) "Whole value of the undertaking" (Finance Act 1927 (c. 10), s.5(1)) means the gross, not the net value of the assets (*Gomme (E.) v. I.R.C.* [1964] 1 W.L.R. 1348).

(16) Tenement occupied "one whole year, at the least" (s.2, Poor Relief (Settlement) Act 1825 (c. 57): see *R. v. Ormesby* 4 B. & Ad. 214; *R. v. Herstmonceaux* 7 B. & C. 551; *Hastings v. St. James, Clerkenwell* L.R. 1 Q.B. 38.

"Taking the case as a whole", see AS A WHOLE.

See WHOLLY.

WHOLESALE. (1) "As a general rule 'wholesale' merchants deal only with persons who buy to sell again; whilst 'retail' merchants deal with consumers" (*per* Bacon V.-C., *Treacher v. Treacher* [1874] W.N. 4).

(2) The sale of 4½ gallons or more of beer was a sale "by wholesale" within s.72(9), Licensing Act 1872 (c. 94) (*R. v. Jenkins* 61 L.J.M.C. 57).

(3) "Wholesale value" (Finance (No. 2) Act 1940 (c. 48), s.21(1)). As to questioning the "wholesale value" placed on articles for purchase tax purposes by the Commissioners of Customs and Excise: see *A.-G. v. A. W. Gamage* [1949] 2 All E.R. 732.

(4) The "wholesale value" of goods under s.3(2) of the Purchase Tax Act 1963 (c. 9) could not be more than the price actually paid for them (*Morisis Products v. Customs and Excise Commissioners* [1969] 1 W.L.R. 1585).

Stat. Def., Alcoholic Liquor Duties Act 1979 (c. 4), s.65; Finance Act 1981 (c. 35), Sched. 8, para. 11.

WHOLESOME. See **PURE**.

WHOLLY. (1) A solicitor was held to be "wholly disabled from following his usual business" within the meaning of an accident policy when he was confined to his private room by a sprained ankle, even though he was available for consultation, could write letters and deal with some of the matters brought to him by his staff (*Hooper v. Accidental Insurance* 29 L.J. Ex. 340, 484).

(2) Policy "wholly" or "partially kept up" for the benefit of a donee (s.11(1), Customs and Inland Revenue Act 1889 (c. 7)) did not include a policy gratuitously assigned, the premium on which, since the assignment, had been paid by the assignee (*Lord Advocate v. Fleming* [1897] A.C. 145).

(3) A society was not "supported wholly or in part by annual voluntary contributions" within the meaning of s.1 of the Scientific Societies Act 1843 (c. 36) where these amounted to only £607 out of a total gross income of £28,000 (*Nonentities Society v. Linley and Kidderminster Borough Council* (1954) 47 R. & I.T. 426).

(4) "Wholly maintained by voluntary contributions" (Charitable Trusts Act 1853 (c. 137), s.62). A charity was not "wholly maintained by voluntary contributions" within the meaning of this section if it had freehold premises used for the purposes of the charity, and it was immaterial that the premises produced no income (*A.-G. v. Mathieson* [1907] 2 Ch. 383; *Neville Estates v. Madden* [1962] Ch. 832).

(5) "Wholly or mainly occupied" (Rating and Valuation Act 1961 (c. 45), s.11(1)(a)). A seaside holiday centre for miners and their families was "wholly or mainly occupied" for charitable purposes (*Wynn v. Skegness U.D.C.* [1967] 1 W.L.R. 52). The estate offices and the premises occupied by the estate's governors for the purposes of administering a wholly charitable estate are covered by this section (*Aldous v. Southwark London B.C.* [1968] 1 W.L.R. 1671).

(6) A house is used by a charity "wholly or mainly for charitable purposes" within s.4(2)(a) of the Local Government (Financial Provisions, etc.), (Scotland) Act 1962 (c. 9) where it is occupied by an officer employed by the charity in order to facilitate the carrying out of charitable purposes (*Glasgow Corpn. v. Johnstone* [1965] A.C. 609).

(7) "Wholly or mainly" (Education (Mandatory Awards) Regs. 1982 (No. 954), reg. 13(1)(a) as amended by Education (Mandatory Awards) No. 2 Regs. 1983 (No. 477), reg. 2). A British citizen who left the U.K. at the age of four, returned thirteen years later to study for the G.C.E. exams, and subsequently applied for a local authority grant to attend a polytechnic, was held to have been in the U.K. "wholly or mainly for the purpose of receiving full-time education" within the meaning of this regulation (*R. v. Hereford and Worcester County Council ex p. Wimbourne* (1984) 82 L.G.R. 251).

"Cause of action wholly or in part arose" (County Court Rules 1936, Ord. 2, r. 1): see **CAUSE OF ACTION**.

“Wholly maintained by voluntary contributions”: see SCIENCE; VOLUNTARY CONTRIBUTIONS.

“Wholly owned subsidiary.” Stat. Def., Companies Act 1948 (c. 38), s.150(4).

See WHOLE.

Stat. Def., Transport Act 1981 (c. 56), s.14; London Regional Transport Act 1984 (c. 32), s.68.

WHOLLY AND EXCLUSIVELY. (1) “Wholly and exclusively laid out or expended for the purposes of the trade, profession or vocation” (Income and Corporation Taxes Act 1970 (c. 10), s.130(a), (Schedule D), and earlier Income Tax Acts).

(a) Costs of litigation to ascertain the time amount of tax to be paid are not within this rule (*Smith’s Potato Estates v. Bolland* [1948] A.C. 508).

(b) Where a company whose shares were quoted above par allotted shares at par to some of its employees, with a view to giving them an interest in the company, the difference between the par value and the market value was held, by a majority, not to be deductible as “disbursements or expenses wholly and exclusively laid out for the purposes of its trade,” by analogy to the permissible deduction of the difference between the rent of a tied house and its annual value (as in *Usher’s Wiltshire Brewery v. Bruce* [1915] A.C. 433). The latter deduction is the only example of permissible deduction of a “profit foregone.” The issue of shares by a company is not a trading transaction (*Lowry v. Consolidated African Selection Trust Ltd.* [1940] A.C. 648).

(c) Directors’ fees bearing no relation to the services rendered are not necessarily money wholly and exclusively laid out for the purposes of the trade of the company (*Copeman v. Flood (William) & Sons Ltd.* [1941] 1 K.B. 202).

(d) A barrister’s travelling expenses between his chambers and his home, where he maintained a study equipped and used for work at night and during vacations, were not incurred “wholly and exclusively” for “the purposes” of his profession (*Newsom v. Robertson* [1953] Ch. 7).

(e) Money spent on advertising designed to avoid nationalisation of the company was money “wholly and exclusively . . . expended for the purposes of the trade” (*Morgan v. Tate and Lyle* [1955] A.C. 21). But not money spent on circulating to shareholders the chairman’s criticisms of the government as being responsible for the company’s difficulties (*Borland v. Kramat Pulai* [1953] 2 All E.R. 1122).

(f) Money paid out by a firm of solicitors as a result of guaranteeing the overdraft of a client who subsequently went bankrupt, was “wholly and exclusively laid out . . . for the purposes of the . . . profession,” as it is the practice of some firms of solicitors to guarantee loans to clients (*Jennings v. Barfield and Barfield* [1962] 1 W.L.R. 997).

(g) Expenses incurred by a solicitor in attending law conferences and meetings in the U.S.A. and Canada were not allowable (*Bowden v. Russell and Russell* [1965] 1 W.L.R. 711). But, distinguishing this case, the expenses incurred by a partner in a firm of chartered accountants in attending a conference in New York were allowed (*Edwards v. Warmesley Henshall & Co.* [1968] 1 All E.R. 1089).

(h) Compensation paid to a director for loss of office can be deductible under this section, but where the payment occurs in connection with the contemporaneous change in the shareholding of the company, the company had to prove that it considered the question of payment wholly untrammelled by the terms of the bargain made by the shareholders, and that the decision to pay the compensation was made

solely in the interests of its trade (*Smith (G. J.) & Co. v. Furlong* [1969] 2 All E.R. 760).

(j) The cost of an operation undergone by a part time professional guitarist on his little finger was not deductible (*Prince v. Mapp* [1970] 1 W.L.R. 260).

(k) If the only reason for the expenditure is the promotion of business it is deductible, even though it necessarily involves other consequences which might be of advantage to the taxpayer. But if there was more than one reason for the expenditure, and one of them was not the promotion of business, none of it is deductible (*Ransom v. Higgs* [1973] 1 W.L.R. 1180).

(l) Expenses incurred by a dentist in travelling the ten miles between his laboratory, one mile from his house, and his surgery were not allowable under section 130 (*Sargent v. Barnes* [1978] 1 W.L.R. 823).

(m) The wages and expenses of an employee seconded to a subsidiary overseas were held to have been “wholly and exclusively” laid out for the purposes of the trade of the parent company within the meaning of s.130(a) (*Robinson v. Scott Bader Co.* [1981] 1 W.L.R. 1135).

(n) Payments made by a farming couple to their four young children in return for helping with the work on the farm were not expended “wholly and exclusively” for the purposes of the trade of farming (*Dollar v. Lyon* [1981] S.T.C. 333).

(o) Ex gratia payments made by a brewery company to tenants of tied houses, as an inducement to surrender their tenancies, and as part of a general programme of taking tied houses back into company management, were not made wholly and exclusively for the purposes of the company’s business (*Watneys London v. Pike* [1982] S.T.C. 733).

(p) Money spent by a female barrister on the upkeep of a wardrobe of clothes of a style that she was required to wear in court, was not spent by her “wholly and exclusively” for the purposes of her profession, because such money was also spent to serve her private purpose of providing apparel with which to clothe herself (*Mallalieu v. Drummond* [1983] 2 A.C. 861).

(q) Payments made to a number of employees by a company on the day it ceased trading, although described as “in lieu of notice,” were held to have been made to secure an orderly closure and therefore wholly and exclusively for the purpose of the company’s trade (*O’Keefe v. Southport Printers* [1984] S.T.C. 443).

(r) The cost to a firm of solicitors of providing food and drink at regular partners’ meetings was not deductible, but the cost to the firm of their attending at its annual weekend conference was deductible (*Watkis v. Ashford Sparkes and Harward* [1985] 1 W.L.R. 994).

(2) “Wholly, exclusively and necessarily in the performance of the . . . duties” (Income and Corporation Taxes Act 1970 (c. 10), ss.189(1), 191 (Schedule E), and earlier Income Tax Acts).

The following have been held allowable under this rule:

(a) The money spent by a clergyman in entertaining visiting clergy who preached or ministered to his parishioners (*Mitchell v. Mayhew* (1954) 47 R. & I.T. 435).

(b) The expenses incurred by a doctor, who practised in Fishguard, in travelling to perform his duties at a hospital in Haverfordwest (*Owen v. Pook* [1970] A.C. 244). Cf. *Ricketts v. Colquhoun infra*.

(c) The travelling expenses paid by United Kingdom brewery companies to a Canadian citizen with exceptional expertise on brewery mergers whose services they were anxious to retain (*Taylor v. Provan*, *The Times*, March 14, 1974).

The following have been held not to be allowable under this rule:

(a) The expenses incurred by a barrister, who practised in London, in travelling to perform his duties as Recorder of Portsmouth (*Ricketts v. Colquhoun* [1926] A.C. 1). Cf. *Owen v. Pook supra*.

(b) An army officer's compulsory mess subscription (*Lomax v. Newton; Griffiths v. Mockler* [1953] 1 W.L.R. 1123).

(c) The meal allowance paid to a local government officer on the evenings he attended council committee meetings as part of his duties (*Sanderson v. Durbidge* [1955] 1 W.L.R. 1087).

(d) The travelling expenses of the wife of a director travelling on business, even though she was herself a non-executive director of the company (*Maclean v. Trembath* [1956] 1 W.L.R. 437).

(e) Subscriptions to clubs which a bank manager has been instructed to join for the purpose of fostering local contracts (*Brown v. Bullock* [1961] 1 W.L.R. 1095).

(f) The difference in the rent of a flat which a taxpayer has been instructed by his employers to take, the better to perform his duties such as entertaining, the rent of which is paid by the taxpayer and the rest made up by his employers (*McKie v. Warner* [1961] 1 W.L.R. 1230).

(g) An articled clerk's examination fees (*Lupton v. Potts* [1969] 1 W.L.R. 1749).

(h) Money spent by an engineer and county surveyor in attending a world road conference in Tokyo was not allowable, even though it was attended specifically in the hope of obtaining expert support for a scheme he had put up to the county authority (*Owen v. Burden* [1972] 1 All E.R. 356).

(j) Expenses incurred in cleaning clothes made dirty by the necessity of visiting construction sites (*Ward v. Dunn* [1978] T.R. 375).

WHOMSOEVER. (1) A covenant for quiet enjoyment without interruption "by any person or persons whomsoever," extends even to the unlawful acts of all persons therein named or comprised, but not to the unlawful acts of third persons having no title (*Woodf.* (24th ed.) 628; *Touch.* 166, 170, 171).

(2) "Any other persons whomsoever" are words extremely wide; they mean everybody, and require a very strong context to restrict them (*R. v. Doubleday* 3 E. & E. 501).

See WHOSOEVER; HEIRS WHOMSOEVER.

WHORE. (1) A whore is a woman who practises unlawful commerce with men, particularly one that does so for hire (*Sheehy v. Cokley* 43 Iowa, 185). See hereon *Ezekiel*, ch. xvi.

(2) By custom, and independently of Slander of Women Act 1891 (c. 51), it is actionable to say in the City of London that a woman is a "whore" there, "because a whore is there to suffer the corporal punishment of carting and whipping" (*Hart v. Holmes Cunningham*, 168; see further *Robertson v. Powell Selwyn* N.P. 1259).

(3) A woman may be called a "whore" by words of implication, e.g. to say she had a bastard, or by calling her husband a cuckold (*Hart v. Holmes sup.*).

See BROTHEL; STREET WALKER.

WHOSOEVER. (Offences Against the Person Act 1861 (c. 100), s.62). The meaning of the word "whosoever" in the phrase "whosoever shall be guilty of an assault upon a male person" could not be limited and therefore a woman could be found guilty of such an assault (*R. v. Hare* [1934] 1 K.B. 354).

See WHOMSOEVER.

WHOSOEVER WILL GIVE INFORMATION. A party who had been robbed of banknotes put forth a handbill wherein it was stated that “whosoever will give information” whereby the same might be traced should, on conviction of the parties, receive a reward; held, that the only person entitled to the reward was he who first gave information by which the notes were recovered (*Lancaster v. Walsh* 7 L.J. Ex. 209; see further *Smith v. Moore* 1 C.B. 438; *Lockhart v. Barnard* 15 L.J. Ex. 1).

WIC. “A place upon the sea-shore, or upon a river” (Co. Litt. 4 b).

WICKED. To say of a bishop that he is a “wicked man” is actionable (*per Scroggs J.*, *Townsend v. Hughes* 2 Mod. 160).

WIDENING. The laying of a third track was held to be a “widening” of a railway under a railway Act, and not making, maintaining, altering or using the railway as originally constructed (*Lloyds Bank v. Railway Executive* [1952] 1 T.L.R. 1207).

WIDOW. (1) A widow is a woman who has survived a man to whom she was lawfully married, and who was his wife at the time of his death.

(2) A woman surviving a man with whom she has gone through the ceremony of marriage, but with regard to whom she had obtained a declaration of nullity of marriage, is not his “widow” (*Re Boddington* 22 Ch. D. 597; 25 *ibid.* 685). So, a wife divorced who survives her husband, is not his “widow,” within the Statute of Distribution; *secus*, if only judicially separated (*Rolfe v. Perry* 32 L.J. Ch. 149). But a reputed wife, taking by a *designatio personæ*, may take as her reputed husband’s “widow,” and then that word will connote her surviving him (*Re Lowe* 61 L.J. Ch. 415); and if the gift be to her for life she shall so long continue his “widow,” that means until she shall thereafter marry: see *Re Wagstaff* [1908] 1 Ch. 162, and *Re Hammond* [1911] 2 Ch. 342, cited **WIFE**; but she remains the widow of her former husband if her subsequent marriage is annulled (*Re Dewhirst* [1948] Ch. 198).

(3) A woman who had divorced her husband was held not to have qualified on his death for an interest given to her by will on her becoming a widow (*Re Norman’s Will Trusts* 84 S.J. 186); cp. *Re Slaughter* [1945] Ch. 355, cited **WIFE**.

(4) (Widows’, Orphans’ and Old Age Contributory Pensions Act 1925 (c. 70), s.1(1); Widows’, Orphans’ and Old Age Contributory Pensions Act 1936 (c. 33), s.1(1)) did not include a woman who was divorced from the insured man (*Colgan v. Department of Health for Scotland* 1937 S.C. 16).

(5) A widow remains a widow though she goes through the form of a marriage not allowed by law; therefore if a widow, prior to August 28, 1907, married her deceased sister’s widower, she remained her first husband’s widow down to that date; and though by Deceased Wife’s Sister’s Marriage Act 1907 (c. 47) (passed on that date) her second marriage was legalised and she was no longer a widow, yet by s.2 of that Act her rights and interests as a widow were preserved to her: see *Re Whitfield* [1911] 1 Ch. 310; *Davies v. Springfield* [1922] W.N. 36.

(6) In a gift over on death of testator’s “widow,” the use of this word shows that the event was contemplated to happen after testator’s death (*Randfield v. Randfield* 2 D.G. & J. 57; cp. *Taylor v. Stainton* 2 Jur. N.S. 634, 635).

(7) “Widow,” in a policy or in the rules of a friendly society, is not confined to the person who was wife at the time the policy was taken out or the membership commenced, any more than “children” is so limited (*Re Atkinson* 39 S.J. 655). See

further *Re Browne* [1903] 1 Ch. 188, and *Re Parker* [1906] 1 Ch. 526, both cited WIFE.

(8) "Wherever an estate is given to a widow for life, 'provided she shall not marry,' unless there be a devise over immediately it is merely *in terrorem*" (*per Ashhurst J., Doe v. Freeman* 1 T.R. 392, 393).

(9) A gift to the "widows" of a place is a good charity (*Powell v. A.-G.* 3 Mer. 48; *A.-G. v. Comber* 2 Sim. 7 St. 93, on which last case see *Browne v. King* 17 L.R. Ir. 453, 454; *Russell v. Kellett* 26 L.T.O.S. 193; *Thompson v. Corby* 8 W.R. 267, cited SPINSTER).

(10) A gift for the benefit of certain "widows and orphans" was held to be charitable (*Re Coulthurst* [1951] Ch. 661).

(11) As to the effect of the use of the word "widow" in a post-nuptial settlement, see *Lort-Williams v. Lort-Williams* [1951] P. 395.

(12) "Widow or other member of the workman's family," under Workmen's Compensation Act 1925 (c. 84): see *Green v. Premier Glynrhonwy Slate Co. Ltd.* [1928] 1 K.B. 561.

(13) "Where a tenant leaves no widow" (Increase of Rent and Mortgage Interest (Restrictions) Act 1920 (c. 17), s.12(1)(g)) means no widow living (*Tinkham v. Perry* [1951] 1 K.B. 547).

(14) By remarriage a widow changes her status from widow to married woman, but she remains "the widow of the person whose death gave rise to the claim" under the Fatal Accidents Acts and therefore the discretion of the Court under R.S.C., Ord. 80, r. 12, in respect of the control of the money continues (*Taylor v. Cheltenham & Hereford Breweries* [1952] 2 Q.B. 493). On the other hand a widow who remarries may still be entitled to make a claim under these Acts (*Dietz v. Lennig Chemicals* [1967] 3 W.L.R. 165).

(15) A widow suing under the Fatal Accidents Acts is correct in showing that she sues "as widow" in the indorsement of the writ (*Stebbing v. Holst & Co.* [1953] 1 W.L.R. 603).

"Widow's pension." Stat. Def., Widows', Orphans' and Old Age Contributory Pensions Act 1936 (c. 33), s.1(1)(a).

See HUSBAND; NATURAL REPRESENTATIVES; WIFE.

WIDOWED MOTHER. A widow who has married again cannot be a "widowed mother" within s.35, Divided Parishes and Poor Law Amendment Act 1876 (c. 61) (*Amersham v. London* 20 Q.B.D. 103; *Llanelly v. Neath* [1893] 2 Q.B. 38; but see *Highworth v. Westbury-on-Severn* 5 T.L.R. 716). See CHILD; WIFE.

WIDOWER. See MARRIED MAN. (Finance Act 1920 (c. 18), s.19) did not include a man who had been divorced from his wife (*Kliman v. Winckworth* 17 Tax Cas. 569).

WIDOWHOOD. (1) "During widowhood": see *Rishton v. Cobb* 9 L.J. Ch. 110, cited UNMARRIED; *Re Hammond* [1911] 2 Ch. 342.

(2) A gift "during her widowhood" to a person (correctly named but not in any way described) who had lived with the testator, but was in fact a spinster, was held to fail, for the legatee could never be the widow of the testator (*Re Gale* [1941] Ch. 209); otherwise where the beneficiary was described in the will as the testator's wife (*Re Lynch* 168 L.T. 189).

(3) If a widow, being entitled to the income of a fund during her widowhood, goes through a ceremony of re-marriage which is afterwards annulled, *semble* her

widowhood ceases on the re-marriage. At any rate, if, on the re-marriage, she allows the fund to be distributed on the footing that her widowhood has ceased, she cannot afterwards assert a claim (*Re Eaves* [1940] Ch. 102); and see *Dodsworth v. Dale* [1936] 2 K.B. 503; and *Fowke v. Fowke* [1938] Ch. 774; *Adams v. Adams* [1941] 1 K.B. 536.

(4) A gift “during her widowhood” to a wife who subsequently divorced the testator, but where the testator, after the divorce, confirmed the will in a codicil, was held to be good;—the term “widowhood” not to be construed in its strict sense in which it does not apply to a former wife who has been divorced (*Re Carrigan* [1967] Qd. R. 379).

WIFE. (1) “Wife” (s.35, Divided Parishes etc. Act 1876 (c. 61), included a widow (*Reigate v. Croydon, Medway v. Bedminster* 14 App. Ca. 465). See **CHILD**; **WIDOWED MOTHER**; **MARRIED MAN**.

(2) S. 38 (3) of the Finance Act 1938 (c. 46), which provided that the income of property voluntarily settled was to be deemed the income of the settlor if among other things it was capable of becoming applicable for the benefit of the settlor or his “wife,” did not apply if the income was capable of becoming applicable for the benefit of the settlor’s wife after his death, and in that sense “wife” did not include “widow” (*Vesteys (Lord) Executors v. Inland Revenue Commissioners* [1949] 1 All E.R. 1108, overruling *Inland Revenue Commissioners v. Gaunt* [1941] 1 K.B. 706).

(3) “Any wife” (s.27, Matrimonial Causes Act 1857 (c. 85)) “must certainly include any wife being a natural-born English subject” (*per* Cresswell J.O., delivering the judgment, *Deck v. Deck* 29 L.J.P.M. & A. 129; see also *Bond v. Bond* 29 L.J.P.M. & A. 143).

(4) For the purposes of the National Assistance Act 1948 (c. 29), s.42(1)(a) “wife” includes the wife of a polygamous marriage (*Imam Din. v. National Assistance Board* [1967] 2 Q.B. 213). But it had earlier been held that a woman domiciled in England who contracted a polygamous marriage in Egypt did not become a “wife” for the purposes of the Law Reform (Miscellaneous Provisions) Act 1949 (c. 100), s.1 (*Risk v. Risk* [1951] P. 50).

(5) A deserting and adulterous wife is not a “wife” within s.4, Vagrancy Act 1824 (c. 83), even though the husband has committed adultery since she left him, for by her adultery he is no longer “legally bound to maintain” her within s.3 (*R. v. Flintan* 1 B. & Ad. 227). But connivance at a wife’s adultery will preclude a husband from escaping liability for her necessities (*Wilson v. Glossop* 20 Q.B.D. 354).

(6) A divorced wife is not a “wife” within a general bequest or limitation (*per* Kay J., *Re Morrieson, Hitchins v. Morrieson* 40 Ch. D. 30, rejecting *Re Bullmore* 22 Ch. D. 619, cited **HUSBAND**). So, a woman who has bigamously become a supposed wife, is not comprised in such a bequest or limitation (*Wilkinson v. Joughin* L.R. 2 Eq. 319); *secus*, in the absence of proof of fraud on her part (*Re Petts* 29 L.J. Ch. 168). See **WIDOW**.

(7) The word “wife” does not, for the purposes of a power of appointment, include a divorced wife (*Re Slaughter, Trustees Corporation v. Slaughter* [1945] Ch. 355). Cp. **WIDOWER**.

(8) “Any wife who may survive the appointor” did not include a wife who had been divorced from the appointor (*Re Allan, Allan v. Midland Bank Executor and Trustee Co.* [1954] Ch. 295).

(9) Gift by will “to my wife” was held to entitle a divorced wife to take (*Re Devling, Vroland v. Devling* [1955] V.L.R. 238; [1955] A.L.R. 700).

(10) “A wife (*uxor*) is a good name of purchase, without a Christian name” (Co. Litt. 3 a).

(11) A woman who is only a reputed wife may take as “wife” if, under the circumstances, that word is a clear designation of her (see *Pratt v. Matthew* 25 L.J. Ch. 409, and *Re Petts* 29 L.J. Ch. 168, both cited MY; *Dolby v. Powell* 30 Bea. 534; see hereon *Doe d. Gains v. Rouse* 5 C.B. 422; *Re Howe* 33 W.R. 48; *Re Horner* 37 Ch. D. 695; *Re Harrison* [1894] 1 Ch. 561; *Re Lowe* 61 L.J. Ch. 415; *Re Plant* 47 W.R. 183; *Anderson v. Berkley* [1902] 1 Ch. 936; *Re Wagstaff* [1908] 1 Ch. 162; *Re Hammond* [1911] 2 Ch. 342; *Re Wagstaff* was applied in *Re Smalley* [1929] 2 Ch. 112; HUSBAND); but in a bequest to A for life, remainder to his “wife” (without more), that must almost always mean A’s lawful wife; for A may marry after the testator’s death, and then there would be a person exactly answering the description of A’s wife (*Re Davenport* 20 L.T.O.S. 165). See further RELATIONS.

(12) Even an intended wife may take under a bequest to the testator’s “wife” if that word, under the circumstances, is a clear designation of her (*Schloss v. Stiebel* 6 Sim. 1).

(13) (a) As to construing testamentary gifts to a wife, “the distinctions deducible from general principles, and the authorities, appear to be the following—

“1. That a devise or bequest to the wife of A, who has a wife at the date of the will, relates to that person, notwithstanding any change of circumstances which may render the description inapplicable at a subsequent period, and is under ‘all’ circumstances confined to her;

“2. If A have no wife at the date of the will, the gift embraces the individual sustaining that character at the death of the testator; and

“3. If there be no such person, either at the date of the will or at the death of the testator, it applies to the woman who shall first answer the description of wife at any subsequent period” (1 Jarm. (8th ed.) 414).

(b) See further as to r. 1, *Re Hancock* [1896] 2 Ch. 173; on this case see *Foakes v. Jackson* 69 L.J. Ch. 352. In *Re Drew* [1899] 1 Ch. 336, Stirling J., found a context in the will which enabled him to determine that “wife” of the testator’s son meant the lady who was such wife at the son’s death, and not her who was the wife at the date of the will but who had since died; see further *Longworth v. Bellamy* 40 L.J. Ch. 513; but see *Boreham v. Bignall* 19 L.J. Ch. 461, cited THEIR, which case was followed in *Firth v. Fielden* 22 W.R. 622; *Re Burrows* 10 L.T. 184. This last case was approved in *Re Coley* [1903] 2 Ch. 102.

(c) “But in construing an instrument intended to make provision for a wife after the husband’s death, r. 1 (sup.) seems to lose weight and is countervailed by the consideration that he, in all probability, intended to provide for her who survived him, and, for that reason, stood in need of the provision therefore, a policy under s.11, Married Women’s Property Act 1882 (c. 75), by a husband ‘for the benefit of his wife and children,’ connotes his wife by a subsequent marriage who becomes his widow” (*per Kekewich J.*, *Re Browne* [1903] 1 Ch. 188, followed in *Re Parker* [1906] 1 Ch. 526); but a policy under s.10, Married Women’s Property Act 1870 (c. 93), by a husband “for the benefit of his wife, or, ‘if she be dead,’ between his children in equal proportions,” did not include an after-taken wife (*Re Griffiths* [1903] 1 Ch. 739, explained in *Re Parker* sup.). See CHILD.

(d) The third rule was applied in *Re Hickman’s Will Trusts* [1948] Ch. 624, where there was a gift to the “wife of my grandson,” and the grandson was survived by a divorced wife and a widow.

(e) The three rules just stated were adopted by Porter M.R., in *Re Laffan and Downes* ([1897] 1 I.R. 469), and he thence deduced the general proposition that, if

after a tenancy for life there be a gift over to a person occupying a particular position, e.g. a lady superioress of a nunnery, such person, in the absence of controlling words, is to be ascertained at the death of the testator, and not at the death of the tenant for life. See **DEATH; DIE**.

(14) Bequest to a wife whilst living apart from her husband: see *Re Moore etc.* 39 Ch. D. 116, cited **DURING**. For further examples of construction of the word "wife" in a will, see *Re Bleckly* [1920] 1 Ch. 450; *Re Hardyman* [1925] 1 Ch. 287.

(15) A wife is not included in a gift to a person's "family" (*Re Hutchinson and Tennant* 8 Ch. D. 540), or "relations," or "next-of-kin" (*Nicholls v. Savage* cited 18 Ves. 53). BUT see **NEAR RELATIONS**.

(16) A bequest to wife "for her own and the children's benefit," she not to diminish principal: see *Hart v. Tribe* 23 L.J. Ch. 462.

(17) A stipendiary magistrate has held that a deceased wife's sister (who has gone through the ceremony of marriage with the husband) and her children, may be recognised as the "wife" and "children" of the man as a member of a friendly society (*Corner v. Oddfellows Society* 46 J.P. 809).

(18) A common law wife is one who is married by a union which though informal was recognised as valid by the common law (*Blanchett v. Hansell* [1943] 3 W.W.R. 275).

(19) In a family provision providing for a named nephew, his wife and his children, the word "wife" was not presumed to refer to the beneficiary's wife at the date of the will (*Burns' Trs.* 1961 S.C. 17).

(20) "Wife . . . of the deceased" (Inheritance (Provision for Family and Dependents) Act 1975 (c. 63), s.1(1)(a)). The first wife of the deceased, who left all his estate to his second wife, was a "wife of the deceased" within the meaning of this section and therefore entitled to make a claim despite the fact that the marriage was polygamous (*Re Sehota, Decd.* [1978] 1 W.L.R. 1506).

(21) "Wife's trust fund": see *Re Rydon's Settlement, Barclays Bank v. Everitt* [1955] 1 Ch. 1.

Bequest to wife has no priority: see **IMMEDIATELY**.

See **JOINT TENANCY**.

Stat. Def., Immigration Act 1971 (c. 77), s.5(4); Mental Health Act 1983 (c. 20), s.26(6); Registered Homes Act 1984 (c. 23), s.19(3).

See **CHILDREN OF THE WIFE; COHABITATION; FEME; HUSBAND; NECESSARIES; WIDOW; BELOVED WIFE; RELATIONS; THEIR; COHABITATION**.

WIKE. In Essex, a farm (Co. Litt. 5 a); "'wyke,' a farm or little village" (Cowel).

WILD ANIMAL. See **FERÆ NATURE**: 2 Bl. Com. 390 *et seq.*

Stat. Def., Wildlife and Countryside Act 1981 (c. 69), s.27.

WILD BIRD. "Wild bird" (Protection of Birds Act 1954 (c. 30), s.14(1)). A prosecution under this Act for possessing a kestrel chick, the progeny of a tame female and a wild male, failed because the justices were not satisfied that the chick was a "wild bird" within the meaning of this section. On appeal the Divisional Court held that it must be a question of fact whether a particular bird is a "wild bird" because wildness is not an inherent attribute of a particular species but an attribute that can be lost (*Robinson v. Kenworthy, The Times*, May 13, 1982).

Stat. Def., Wildlife and Countryside Act 1981 (c. 69), s.27.

WILD PLANT. Stat. Def., Wildlife and Countryside Act 1981 (c. 69), s.27.

WILDFOWL. By “wildfowl,” “pheasants and partridges are not understood, for they are fowl of warren (Manwood, cap. 4, s.3 (4th ed.), p. 363; F.N.B. 86; Rastal, 585). Wildfowl are known in the law, and described by the Wild-fowl Act 1533 (c. 11), which doth take notice of wildfowl. The title of the statute is ‘against destroying of wildfowl.’ It recites that there hath been within this realm great quantities of wildfowl, as ducks, mallards, wigeons, teals, wildgeese, and divers other kind of wildfowl, which is reasonable to be understood of that sort that do get their prey in that manner. The statute of Wild Fowl Act 1549 (c. 7), which repeals that of 1533, takes notice of wildfowl, and hath the general word ‘wildfowl,’ without coming to particulars. Therefore, when the declaration is of ‘wildfowl,’ it is not to be understood that sparrows, wrens, or robin redbreasts, can be thereby included” (*per* Holt C.J., *Keeble v. Hickeringill* 11 East, 574, 577). See FOWL.

WILFUL. (1) “Wilful is a word of familiar use in every branch of law, and although in some branches of law it may have a special meaning, it generally, as used in courts of law, implies nothing blameable, but merely that the person of whose action or default the expression is used is a free agent, and that what has been done arises from the spontaneous action of his will. It amounts to nothing more than this, that he knows what he is doing, and intends to do what he is doing, and is a free agent” (*per* Bowen L.J., *Re Young and Harston* 31 Ch. D. 174; see further *Elliott v. Turner* 13 Sim. 485).

(2) Does not necessarily connote blame, although the word is more commonly used of bad conduct than of good (*Wheeler v. New Merton Board Mills* [1933] 2 K.B. 669).

(3) “If a man permits a thing to be done, it means that he gives permission for it to be done, and if a man gives permission for a thing to be done, he knows what is to be done or is being done, and, if he knows that, it follows that it is wilful” (*per* Lord Goddard C.J., in *Lomas v. Peck* [1947] 2 All E.R. 574, 575).

(4) Whatever is intentional is wilful (*per* Day J., *Gayford v. Chouler* [1898] 1 Q.B. 316, cited WILFUL AND MALICIOUS).

(5) “Wilful,” in Vagrancy Act 1824 (c. 83), s.3: see *Lewisham Guardians v. Nice* 93 L.J.K.B. 469.

See WILFULLY; see FURTHER SERIOUS.

WILFUL ACT. “Wilful act, default, or neglect” of an innkeeper, or his servant, which deprived him of the protection as against a claim by a guest, given by s.1, Innkeepers Liability Act 1863 (c. 41): see *Medawar v. Grand Hotel Co.* [1891] 2 Q.B. 11; in this phrase “wilful” was only to be read with “act,” and not also with “default or neglect” (*per* Byles J., *Squire v. Wheeler* 16 L.T. 93); see also *Whitehouse v. Pickett* 77 L.J.P.C. 96; *Behrens v. Grenville Hotel* 69 S.J. 346; *Cryan v. Hotel Rembrandt* 133 L.T. 395; *Bellville v. Palatine Hotel & Buildings Co.* 171 L.T. 363. Cp. *Carpenter v. Mason* 4 P. & D. 439, cited WILFUL WASTE. As to what was such “default” or “neglect,” see *per* Murphy J., *O'Connor v. Grand International Hotel Co.* [1898] 2 I.R. 96.

See WILFUL DEFAULT. Cp. EXPRESSLY FOR SAFE CUSTODY.

WILFUL AND MALICIOUS. (1) In the power which a judge had to give costs to a plaintiff recovering less than 40s. damages, if certificate given “that the trespass or grievance in respect of which the action was brought was *wilful and malicious*” (Costs in Action of Trespass Act 1840 (c. 24), s.2), the words italicised imported

personal malice and ill-will to the plaintiff, as distinguished from that legal malice which is essential to sustain an action for libel (*Foster v. Pointer* 10 L.J. Ex. 454).

(2) "Whoever shall wilfully or maliciously commit any damage, injury or spoil to, or upon, any real or personal property whatsoever" (s.52, Malicious Damage Act 1861 (c. 97), see Criminal Damage Act 1971 (c. 48), s.1, where the words are omitted); to constitute this offence there had to be some actual damage to the property itself; merely gathering mushrooms growing in a wild state in a field was not such damage to the field (*Gardner v. Mansbridge* 19 Q.B.D. 217, in which case the court observed that the words are disjunctive), but a small damage sufficed, e.g. to the extent of 6d. by walking across a grass field (*Gayford v. Chouler* [1898] 1 Q.B. 316). Where a milk-carrier, having accidentally spilt some of the milk that he was taking on his round, added water to conceal the loss, it was held that there was no offence within this section, for there was an absence of *mens rea* to do damage to anybody, and least of all to the master who was prosecuting (*Hall v. Richardson* 6 T.L.R. 71); but that case was overruled by *Roper v. Knott* ([1898] 1 Q.B. 868), where the milk-carrier fraudulently added water to the milk to increase the bulk and himself get the additional price. In *Roper v. Knott* the court held that the motive in the mind of the milk-carrier was immaterial, because the words are "wilfully 'or' maliciously," and therefore if the act be "wilful" only, the offence is committed, for "a man does a thing wilfully, (1) if he does the act which causes damage to property with the intention of causing the damage, or (2) knowing that the consequences of the act he does will be to cause the damage," and "an offence is committed against the statute if there be wilful damage to the thing, although it does not cause loss to the owner of the thing" (*per Russell C.J., ibid.*). A claim of right would not have taken a case of damage out of this section, if the claim was not a reasonable one, of which the justices were to judge (*White v. Feast* L.R. 7 Q.B. 353; but see on this case *Denny v. Thwaites* 2 Ex. D. 21). See REAL OR PERSONAL PROPERTY. Cp. UNLAWFULLY.

See MALICE; MALICE AFORETHOUGHT.

WILFUL BREACH. Where a person is charged with an offence under s.21 of the Town Police Clauses Act 1847 (c. 89), which make "every wilful breach" of an order an offence, the information was bad if it omitted the word "wilfully" (*Waring v. Wheatley* [1951] W.N. 569).

WILFUL DAMAGE. Stat. Def., Merchant Shipping Act 1894 (c. 60), s.376(1)(h).

WILFUL DEFAULT. (1) "Wilful default of the person in charge" of a ship (s.299, Merchant Shipping Act 1854 (c. 104), and s.419(3), Merchant Shipping Act 1894 (c. 60)), means "by the fault" of such person, whether intentional or negligent, and especially so in view of s.29, Act of 1862 (c. 63) (*Grill v. General Screw Collier Co.* L.R. 1 C.P. 600; 3 *ibid.* 476, especially judgment of Willes J.; see hereon Merchant Shipping Act 1894 (c. 60), s.419(4), on which see *The Koenig Wilhelm I* [1903] P. 114; see Maritime Conventions Act 1911 (c. 57), s.4; *The Enterprise* [1912] P. 207). A master was not guilty of "wilful default" within the meaning of s.419(2) of the 1894 Act if, at the time of the collision he had no personal knowledge of the infringement of the collision regulations, he was not present on the bridge, and the ship was being navigated by a duly certificated officer of the watch (*Bradshaw v. Ewart-James* [1983] 1 All E.R. 12). Cp. WILFUL NEGLIGENCE.

(2) Wilful default by a trustee is the wilfully not doing something which he ought to do, as distinguished from doing something which he ought not to do; cp. BREACH

OF TRUST. See hereon Lewin (15th ed.), 740 *et seq.*; Godefrois, 789; Seton, 1157–1166; R.S.C., Ord. 33, r. 2; *Re Stevens* [1898] 1 Ch. 162. See further *Carruthers v. Cairns* 27 Sc. L.R. 640, especially judgment of Inglis, L.P.

(3) A trustee's error of judgment as to the honesty of a solicitor employed by him in the administration of the trust does not amount to wilful default within s.30(1) of the Trustee Act 1925 (c. 19). The use of those words in that section implies either a consciousness of negligence or breach of duty or recklessness in the performance of a duty (*Re Vickery* [1931] 1 Ch. 572).

(4) "Wilful default of the vendor," in conditions of sale, means the not doing what is reasonable under the circumstances, with the knowledge that the omission will probably cause delay (*per* Bowen L.J., *Re Young and Harston* 31 Ch. D. 174, cited WILFUL; *Re Hetling and Merton* [1893] 3 Ch. 269; *Re Pelley and Jacob* 80 L.T. 45; *Re London and Tubbs* [1894] 2 Ch. 524, in which last case Lindley L.J., said, "To make up one's mind not to verify a statement is 'wilful'; but simply not to think about verifying it is not 'wilful' "). Delay by a not unreasonable repudiation of the contract (*North v. Percival* [1898] 2 Ch. 128), or by a difficulty in establishing the title (*Williams v. Glenton* 1 Ch. 200), or, *semble*, even by a mistake by the vendor as to his rights if it be bona fide (*Bennett v. Stone* [1902] 1 Ch. 226; 1903, 1 Ch. 509), is not occasioned by a "wilful default." See further *Re Wilson and Stephens* [1894] 3 Ch. 546; *Smith v. Wallace* [1895] 1 Ch. 385; *Re Strafford to Maples* [1896] 1 Ch. 235; *Re Woods and Lewis* [1898] 2 Ch. 211, cited DEFAULT; Sug. V. & P. 638.

See DEFAULT; NEGLIGENCE; WILFULLY. Cp. WILFUL MISCONDUCT. See further MAKING DEFAULT.

WILFUL DELAY. Delaying the delivery of a declaration, in an action for bribery, for eleven months; held, that there was "wilful delay" in proceeding with the action, within s.14, Corrupt Practices Prevention Act 1854 (c. 102), although delivered within the time then allowed by law, and although plaintiff alleged that he could not sooner acquire the evidence and information necessary to allege the specific charges in the declaration (*Taylor v. Vergette* 30 L.J. Ex. 400). In that case, Martin B., said " 'Wilful delay' does not mean 'perverse delay,' but delay which the plaintiff cannot account for to the satisfaction of the court" (7 H. & N. 147). See further *Guest v. Caldicott* 45 L.T. 609. Cp. DUE DILIGENCE; PROSECUTE.

See further WILFUL DEFAULT, par. (4).

WILFUL DESTRUCTION. See DESTRUCTION.

WILFUL DISOBEDIENCE. (1) The wilful disobedience of a seaman or apprentice (Pt. 4 (Fishing Boats), Merchant Shipping Act 1894 (c. 60), s.376(1)(d)) is "wilfully disobeying any lawful command DURING the engagement": "There may be many cases in which desertion, or absence without leave, would not amount to wilful disobedience, and in these cases the seaman would only be liable to the lesser penalty. Where, however, the seaman deserts or is intentionally absent without leave after the time at which he has been lawfully ordered to be on board, his desertion or absence may amount to 'wilful disobedience,' and, consequently, that he would be liable to imprisonment. The words 'during the engagement' seems to suggest that the contract between the employer and the employed should be taken into account, and that if, having regard to that contract, the order was one which the employed was bound to obey, his disobedience might be dealt with under clause (d)"; a construction which is very much assisted by subs.(5) (*per* Alverstone C.J., *Edgill v. Alward* [1902] 2 K.B. 239). Where there is lawful cause for leaving a ship there is

not wilful disobedience (*Sibery v. Connelly* 94 L.T. 198). Cp. *Whitehead v. Reader* [1901] 2 K.B. 48, cited EMPLOYMENT. See CONTINUED BREACH OF DUTY. "Wilful disobedience to a lawful command," within s.225(1), see *O'Reilly v. Dryman* 85 L.J.K.B. 492, where it was held that an unreasonable demand, as, e.g. to go to sea without a sufficient crew, is not wilful disobedience to a lawful command.

(2) The "wilful" disobedience by a corporation of a judgment or order made under the old R.S.C., Ord. 42, r. 31 (Ord. 45, r. 5, which replaces it omits the word "wilful") meant disobedience which could not be excused as casual, accidental or unintentional: see *Stancomb v. Trowbridge Urban District Council* [1910] 2 Ch. 190. It did not entail obstinacy of an obstructive kind; it meant an intentional disobedience (*A.-G. v. Walthamstow* 11 T.L.R. 533). For disobedience to be "wilful" within this rule it had to be more than casual, accidental or unintentional. It had to be contumacious, that is deliberate in any ordinary sense of obstinacy or rebellion (*Worthington v. Ad-Lib Club* [1965] Ch. 236).

WILFUL INSULT. To interrupt a county court judge whilst giving judgment by saying, "That is a most unjust remark," was a "wilful insult" to the judge within s.162, County Courts Act 1888 (c. 43) (*R. v. Jordan* 57 L.J.Q.B. 483).

WILFUL INTERFERENCE. "Wilfully interfere with or misuse" (Factories Act 1937 (c. 67), s.119(1), now Factories Act 1961 (c. 34), s.143(1)) means interference which is in the nature of a perverse meddling and does not merely mean an intentional interference (*Charles v. Smith & Sons (England)* [1954] 1 W.L.R. 451).

WILFUL MISCONDUCT. (1) Wrong conduct, wilful in the sense of being intended, but induced by mere honest forgetfulness or genuine mistake, does not amount to "wilful misconduct" (see judgment of Grove J., *Gordon v. Great Western Railway* 8 Q.B.D. 44). "What is meant by 'wilful misconduct' is misconduct to which the will is a party; it is something opposed to accidental or negligent; the 'mis' part of it, not the conduct, must be wilful" (*per* Bramwell L.J., *Lewis v. Great Western Railway* 3 Q.B.D. 195); see further *Stevens v. Great Western Railway* 3 Q.B.D. 195); see further *Stevens v. Great Western Railway* 52 L.T. 324; *Spittle v. Great Western Railway* 2 T.L.R. 618; *Haynes v. Great Western Railway* 41 L.T. 436. Cp. "Wilful misbehaviour," s.78, Highways Act 1835 (c. 50); WILFUL DEFAULT; WILFUL NEGLIGENCE; MISCONDUCT; SERIOUS.

(2) The effect of *Lewis v. Great Western Railway* (sup.) was "very effectively paraphrased" by Johnson J., in *Graham v. Belfast & Northern Counties Railway* ([1901] 2 Ir. R. 19), where he says, "wilful misconduct" in a special condition relating to a contract of carriage at owner's risk, "means misconduct to which the 'will' is party, as contra-distinguished from accident, and is far beyond any negligence, even gross or culpable negligence, and involves that a person wilfully misconducts himself who knows and appreciates that it is wrong conduct on his part in the existing circumstances to do, or to fail or omit to do (as the case may be), a particular thing, and yet intentionally does, or fails or omits to do it, or persists in the act, failure, or omission, regardless of consequences"—to which should be added, "or acts with reckless carelessness, not caring what the results of his carelessness may be" (*per* Alverstone C.J., *Forder v. Great Western Railway* [1905] 2 K.B. 535, 536). In this case "wilful misconduct" was negatived; see also *Cordev v. Cardiff Pure Ice Co.* 88 L.T. 192. It should be noted that in *Bastable v. North British Railway* 1912 S.C. 555, the Lord President expressly doubted the dicta in *Lewis v. Great Western Railway* and *Graham v. Belfast & Northern Counties Railway* to the effect that wil-

ful misconduct is something more than and opposed to negligence; but it was found in *Hoare v. Great Western Railway* 37 L.T. 186, “a striking illustration of how very near the line cases may go”). The onus of proving wilful misconduct will generally be on the plaintiff (see *per* Kennedy J., *Forder v. Great Western Railway* and *per* Johnson J., *Graham v. Belfast & Northern Counties Railway* (sup.)). See further *Buckton & Co. v. London & North Western Railway* 87 L.J.K.B. 234, where the definitions laid down in *Lewis v. Great Western Railway* and *Forder v. Great Western Railway* were applied. See also *Smith Ltd. v. Great Western Railway* [1922] 1 A.C. 178, distinguishing *Curran v. Midland Railway* [1896] 2 Ir. R. 183; *Metropolitan Water Board v. London & North Eastern Railway* 22 L.G.R. 383. Railway servants were guilty of “wilful misconduct” in refusing to handle certain goods (*W. Young & Son (Wholesale Fish Merchants) v. British Transport Commission* [1955] 2 Q.B. 177). See further SERIOUS.

(3) (Carriage by Air Act 1932 (c. 36), Sched. I, art. 25.) In order to establish wilful misconduct a plaintiff had to satisfy the court that the person who did the act knew at the time that he was doing something wrong and yet did it notwithstanding, or alternatively, that he did it quite recklessly, not caring whether he did the right thing or the wrong thing, quite regardless of the effects of what he was doing on the safety of the aircraft and of the passengers for which and for whom he was responsible (*Horabin v. British Overseas Airways Corporation* [1952] 2 All E.R. 1016).

(4) “Wilful misconduct” (Offences against the Person Act 1861 (c. 100), s.35). All that is necessary to prove that any conduct is “wilful” is to show that the accused was in fact doing what he intended to do (*R. v. Cooke (Philip)* [1971] Crim. L.R. 44).

(5) “Wilful misconduct” under s.161(4)(b) of the Local Government Act 1972 (c. 70) means deliberately doing something which is wrong knowing it to be wrong or with reckless indifference as to whether it is wrong or not (*Graham v. Teesdale* (1983) 81 L.G.R. 117).

WILFUL NEGLIGENCE. (1) To “wilfully neglect to do a thing” is intentionally or purposely to omit to do it (*per* Mellor J., *R. v. Downes* 1 Q.B.D. 25. *inf.*; see WILFUL); and therefore to pray, instead of sending for a doctor, was to “wilfully neglect” to provide medical aid within s.37, Poor Law Amendment Act 1868 (c. 122) (*R. v. Downes* 1 Q.B.D. 25; *R. v. Senior* [1879] 1 Q.B. 283; see further *R. v. Morby* 8 Q.B.D. 571).

(2) “Wilful neglect” by a husband “to provide reasonable maintenance” for wife or her infant children (s.4, Summary Jurisdiction (Married Women) Act 1895 (c. 39), Matrimonial Proceedings (Magistrates’ Courts) Act 1960 (c. 48), s.1(1)(h)) necessarily involves an inquiry as to the husband’s means, or his capability of earning means (*Earnshaw v. Earnshaw* [1896] P. 160, on which see *Nott v. Nott* [1901] P. 241, cited MEANS). Wilfully means deliberately (*National Assistance Board v. Prisk* [1954] 1 W.L.R. 443). A delusive belief in facts which, if true, would justify non-cohabitation, is a defence to a complaint of desertion, but not necessarily to one of wilful neglect to maintain (*Brannan v. Brannan* [1973] 2 W.L.R. 7). See DESERTION; IDLE AND DISORDERLY PERSON; NEGLIGENCE; PERSISTENT.

(3) Where a husband and wife had parted for many years, and then the husband called at the wife’s house and resumed cohabitation for two or three days, about two months after which the wife went to the husband’s house and asked for admission, but the husband sent her away saying, “Get thee home, and never come here again: go and drown thyself”; held, that he was guilty of wilful neglect, causing his wife “to leave and live separately and apart from him” within Summary Juris-

diction (Married Women) Act 1895 (c. 39), s.4 (*Snape v. Snape*, 64 J.P. 793); but how can a wife 'leave' a home that she has relinquished and to which she has not been re-admitted?

(4) So, the essence of the offence of "wilfully refusing or neglecting" to maintain one's family (s.3, Vagrancy Act 1824 (c. 83)) is the *mens rea*; therefore, there is no such offence where a husband gives a wife a bona fide offer to return to his home (*Flannagan v. Bishopwearmouth* 27 L.J.M.C. 46), or where he refuses to maintain her because he really believes, and has grounds for believing, her to be unchaste (*Morris v. Edmonds* 77 L.T. 56). See DESERTION.

(5) So, if a man is offered work the remuneration for which would make him able to maintain himself, and he refuses the work (and so becomes parochially chargeable) because it is clogged with conditions, e.g. Salvation Army rules, which have no relation to the work or the wages offered for it, he is not guilty of "wilfully refusing or neglecting" to maintain himself, within s.3, Vagrancy Act 1824 (c. 83) (*Popular v. Martin* [1905] 1 K.B. 728). Cp. IDLE AND DISORDERLY PERSON; *Lewisham v. Nice* [1924] 1 K.B. 618.

(6) "Wilfully . . . neglects" (Children and Young Persons Act 1933 (c. 12), s.1(1)) means deliberate and not merely inadvertent neglect. A person might not foresee the possible consequences of failing to call a doctor, but such failure would be deliberate and therefore "wilful" within the meaning of this section (*R. v. Lowe* [1973] 1 Q.B. 702). For earlier cases see *R. v. Connor* [1908] 2 K.B. 26; *Cole v. Pendleton* 60 J.P. 359; *Oakey v. Jackson* [1914] 1 K.B. 216. The House of Lords, by a majority of three to two, overturned previous decisions by holding that the offence under this section of 'wilfully' neglecting a child in a manner likely to cause him unnecessary suffering or injury to health, was not an absolute offence; that if the jury were satisfied that the child did in fact need medical aid at the relevant time, the *mens rea* necessary to establish the charge against a parent or custodian was either that such person was aware at the relevant time that the child's health might be at risk if it did not receive medical aid, or that the parent's unawareness of that fact was due to his not caring whether his child's health was at risk or not (*R. v. Sheppard* [1980] 3 W.L.R. 961).

(7) A farmer who drove his tractor into the path of a train was guilty of obstruction by "wilful neglect" within the meaning of s.36 of the Malicious Damage Act 1861 (c. 97) (*R. v. Gittins* [1982] R.T.R. 363).

(8) "Wilful neglect or default" for the meaning of these words in a company's articles of association, see *Re City Equitable Fire Insurance Co Ltd.* [1925] 1 Ch. 407; *Re Munton* [1927] Ch. 262; *Re City of London Insurance Co* 41 T.L.R. 521.

(9) Where steps are taken which are considered adequate to protect warehoused goods from rats and they, in fact, turn out to be totally ineffective, there is no "wilful neglect" within the terms of the contract of bail (*Kenyon, Son & Craven v. Baxter Hoare & Co.* [1971] 1 W.L.R. 519).

As to what is "wilful neglect or default of the vendor," in conditions of sale: see WILFUL DEFAULT.

"Wilful neglect or misconduct" conducing to adultery: see CONDUCE. Cp. WILFUL MISCONDUCT.

Cp. NEGLECT; OBSTRUCT; WILFUL ACT; WILFUL DEFAULT.

WILFUL OBSTRUCTION. See OBSTRUCT.

WILFUL REFUSAL. (1) In *Francis v. Steward* (5 Q.B. 998), Denman C.J., said that "wilful" added nothing to "refusal," for, he added, "all refusal is wilful." But

it is submitted that a “wilful refusal” is a refusal without adequate cause; therefore, a trustee had not “wilfully refused” to convey trust lands within s.2, Trustee Act 1852 (c. 55) (see s.26(vi), Trustee Act 1893 (c. 53)), when his refusal to do so was based on a bona fide doubt as to the right of the requesting person (*Re Mills* 40 Ch. D. 14). See now Trustee Act 1925 (c. 19), s.44.

(2) A “wilful refusal” to receive money payable by the promoters of an undertaking on entering lands (s.88, Lands Clauses Consolidation Act 1845 (c. 18)) meant “a refusal arising from an exercise of mere will or caprice, and not from the exercise of reason” (*per Kindersley V.-C.*, *Re Ryde Commissioners* 26 L.J., Ch. 299, citing and applying *Ex p. Bradshaw* 17 L.J. Ch. 454, and *Re Windsor, etc. Railway* 12 Bea. 522).

(3) The phrase cannot apply to an official trustee of charity lands in whom the legal estate is vested and who (if required) is ordered to concur in the conveyance to the promoters, for he is not bound to receive the purchase or compensation money (*Re Leeds Grammar School* [1901] 1 Ch. 228).

(4) Wilful and persistent refusal to allow marital intercourse is not of itself sufficient ground for a decree of nullity of marriage: see *Napier v. Napier* [1915] P. 184.

(5) “Wilful refusal to consummate” (Matrimonial Causes Act 1937 (c. 57), s.7(1)(a)—see Matrimonial Causes Act 1973 (c. 18), s.12) connotes a settled and definite decision come to without just excuse (*Horton v. Horton* [1947] 2 All E.R. 871).

See REFUSAL; WILFUL NEGLECT.

WILFUL WASTE. (1) a tenant for life, sans waste, “further than wilful waste,” is entitled to the interest of money produced by sale of decaying timber cut by order of the court (*Wickham v. Wickham* 19 Ves. 419).

(2) In the phrase “purloin, embezzle, or wilfully waste or misapply” property (Poor Law Amendment Act 1834 (c. 76), s.97), “wilfully” applies to “misapply” as well as to “waste” (*Carpenter v. Mason* 4 P. & D. 439). Therefore, this offence of “misapplying” is not properly stated without the addition of “wilfully”; for though, probably, “misapply” imports fault, *e.g.* negligence, yet it does not, of itself, import wilfulness (*ibid*). *Cp. Squire v. Wheeler* 16 L.T. 93, cited WILFUL DEFAULT.

See WASTE; WITHOUT IMPEACHMENT OF WASTE.

WILFULLY. (1) It has been said that the legal meaning of “wilfully” is purposely without reference to bona fides or collusion (argument of counsel in *Hutchinson v. Manchester, Bury & Rossendale Railway* 15 L.J. Ex. 295, citing *R. v. Price* 9 L.J.M.C. 49). “‘Wilfully’ means deliberately and intentionally” (*per Russell C.J.*, *R. v. Senior* [1899] 1 Q.B. 283, cited WILFUL NEGLECT). So, “wilful” disobedience of a judgment or order made under the old R.S.C., Ord. 42, r. 31 (Ord. 45, r. 5, which replaces it, omits the word “wilful”), did not involve obstinacy of an obstructive kind; it meant an intentional disobedience (*A.-G. v. Walthamstow* 11 T.L.R. 533). See UNLAWFULLY.

(2) But “‘wilfully’ was used in s.79, Metropolitan Buildings Act 1844 (c. 84), in a sense denoting ‘evil intention,’ and such is the common use of the word in the English language. Thus Milton—

‘Thou to me
Art all things under heav’n, all places thou,
Who for my “wilful” crime art banish’d hence.’

And Hooker says, 'So full of wilfulness and self-seeking is our nature' " (*per* Campbell C.J., *R. v. Badger* 25 L.J.M.C. 90); and it was held in that case that a surveyor was not guilty of the offence of "wilfully receiving" a higher fee than he was entitled to, when acting under an honest mistake. See also *Smith v. Barnham* 1 Ex. D. 419, where the words were "shall wilfully throw any soil into" certain rivers, on which Bramwell B., said, " 'wilfully' appears to me in this section to mean 'wantonly' or 'causelessly' "; but see *per* Kennedy J., *High Wycombe v. Thames Conservators* 78 L.T. 463, cited WILFULLY SUFFER.

(3) The effect of omitting such words as "knowingly" or "wilfully" from a statute replacing an earlier statute may be only to alter the burden of proof (*Harding v. Price* [1948] 1 K.B. 695).

(4) Where a statutory offence is for something "wilfully" done or omitted, that word should always be employed in the indictment; thus if the offence be for "wilfully and maliciously" doing anything, the indictment will be bad if it charges that the act was "unlawfully and maliciously" done, for a thing may be "unlawfully" done without wilfulness, and "maliciously" does not include "wilfully" where both words are made part of the offence (*R. v. Davis* 1 Leach (4th ed.), 493). So, an indictment under s.34, Municipal Corporations Act 1835 (c. 76), which charged that the defendant "falsely and fraudulently" answered the prescribed questions on applying to vote, did not sufficiently state that he had "wilfully" made "false answer," which is the offence defined by the section (*R. v. Bent* 1 Den 157). But on *R. v. Davis*, see *Note*, 43 L.J.M.C. 94; *R. v. Pembliton* L.R. 2 C.C.R. 122, cited MALICE. Cp. UNLAWFULLY.

(5) The use of word "wilfully" in the description of a statutory offence implies also "knowingly," in that the accused must have the intention to commit the specific crime for which he is charged (*R. v. Piche* (1967), 10 Cr. L.Q. 107).

(6) "Wilfully" break a street lamp (s.206, Metropolis Management Act 1855 (c. 120)): see *Burgess v. Morris* 77 L.T. 97, cited CARELESSLY.

(7) Fraud "wilfully committed in using" a weighing machine (s.26, Weights and Measures Act 1878 (c. 49)) was, *semble*, not committed if the purchaser really knew and approved of what was being done (*per* Alverstone C.J., *King v. Spencer* 2 L.G.R. 984, cited also UNJUST; *Harris v. Allwood* 57 J.P. 7). See further *Stone v. Tyler* [1905] 1 K.B. 290, cited USING.

(8) Lessee's covenant not to "wilfully do or suffer" anything to hinder or prevent the renewal of a licence: see *Bryant v. Hancock* [1899] A.C. 442; and see thereon *per* Ridley J., *Mumford v. Walker* 71 L.J.K.B. 19, cited ASSIGNS, and *per* Collins M.R., *Wilson v. Twamley* [1904] 2 K.B. 104, 105, which observations were applied in *Palethorpe v. Home Brewery Co.* [1904] 2 K.B. 5, cited KEEP. See further PERMIT; SUFFER; *Atkin v. Rose* 92 L.J. Ch. 209.

(9) "Wilfully or negligently" (Road Traffic Act 1960 (c. 16), s.134(3)) failing to comply with the conditions of a licence is one single offence: therefore, a charge of wilfully and negligently failing to comply is not bad for duplicity (*Newton v. Smith; Standerwick v. Smith* [1962] 2 Q.B. 278).

(10) Wilfully pretending to be a solicitor means "deliberately" pretending (*Hall v. Jordan* [1947] 1 All E.R. 826).

(11) "Wilfully" (Perjury Act 1911 (c. 6), s.1(1)) merely means deliberately and not inadvertently or by mistake. It is not necessary for the prosecution to prove that the accused knew or believed the false statement to be material to the proceedings (*R. v. Millward (Neil)* [1985] 2 W.L.R. 532).

See WILFUL; WILFUL AND MALICIOUS; WILFULLY AND FALSELY; cp. WILFULLY SUFFER; WILFULLY TRESPASS; KNOWINGLY; WILLINGLY. See further UNLAWFULLY; WILFUL NEGLECT; WILFUL REFUSAL; WILFULLY INTERRUPT; WITHHOLD.

WILFULLY AND FALSELY. “Wilfully and falsely” means wilful falsity, not mere incorrectness (*Ellis v. Kelly* 30 L.J.M.C. 35). That case was on s.40, Medical Act 1858 (c. 90), which imposed a penalty for “wilfully and falsely” pretending to a medical title; and Pollock C.B., there said, “Now ‘wilfully’ cannot here mean merely ‘intentionally,’ as opposed to ‘accidentally’ (which is the meaning it sometimes has), for a man cannot accidentally call himself a Doctor of Medicine; and therefore the section must be read as pointing to wilful falsity.” See hereon *Andrews v. Styrap* 26 L.T. 704; *Carpenter v. Hamilton* 37 L.T. 157; *Pedgrift v. Chevalier* 29 L.J.M.C. 225; *Steele v. Hamilton* 3 L.T. 322; *R. v. Lewis* 12 T.L.R. 415, 433; *Younghusband v. Luftig* [1949] 2 K.B. 354; *Wilson v. Inyang* [1951] 2 K.B. 799; PHYSICIAN.

See WILFULLY.

WILFULLY ASSAULT. “Wilfully assaults a child” (s.12(1), Children Act 1908 (c. 67)); see *R. v. Hatton* [1925] 2 K.B. 322.

WILFULLY ENTER. “Wilfully enter upon and take possession of” lands (s.89, Lands Clauses Consolidation Act 1845 (c. 18)) did not apply to a case where the entry was under a mistaken belief of a right to make it (*Steele v. Midland Railway* 21 L.T. 387).

WILFULLY HOLD OVER. (1) Tenant who “shall wilfully hold over” demised premises (Landlord and Tenant Act 1730 (c. 28), s.1): “The expression in the statute, ‘wilfully hold over,’ implies not only a holding over after the term has expired, but a holding over in the absence of a bona fide belief on the part of the tenant that he is justified by the circumstances in so doing” (*per* Cockburn C.J., *Swinfen v. Bacon* 30 L.J. Ex. 368). See further *Wright v. Smith* 5 Esp. 203; *Hirst v. Horn* 6 M. & W. 393; *Rands v. Clark* 19 W.R. 48.

(2) Where tenants stay in possession, after receiving a bad notice to quit, until a valid one is served, the holding over was not done “wilfully” within the meaning of this section (*French v. Elliott* [1960] 1 W.L.R. 40).

WILFULLY SUFFER. To “wilfully suffer” deleterious matter to pass into the Thames (s.92, Thames Conservancy Act 1894 (c. clxxxvii)), there had to be more than a mere omission to do something to prevent the evil (*High Wycombe v. Thames Conservators* 78 L.T. 463); *semble*, the omission had to be deliberate and intentional (*R. v. Senior* [1899] 1 Q.B. 283, cited WILFULLY). Cp. “cause or suffer,” under SUFFER; CAUSE OR PERMIT.

“Wilfully do or suffer”: see WILFULLY.

WILFULLY TRESPASS. “Wilfully trespass upon any railway, and shall refuse to quit upon request” (s.16, Post Office (Duties) Act 1840 (c. 96)); notwithstanding *Jones v. Taylor* (28 L.J.M.C. 204, n.), Blackburn J., held that a continuing trespass was not, under these words, excused because the offender fancied he had a right to be where he was (*Foulger v. Steadman* L.R. 8 Q.B. 65). Cp. WILFULLY; WILFULLY AND FALSELY; UNLAWFULLY.

WILL. (1) “The general principle I take to be clear. On the one hand, where a testator in a codicil uses the word ‘will’ abstractedly from the context, it will refer to all antecedent testamentary dispositions which together make the will of the testator; and consequently where the testator by a codicil confirms in general terms his will or his last will and testament, the will, together with all the codicils, is taken to have been confirmed. ‘The will of a man,’ said Lord Penzance in *Lemage v. Goodban* (L.R. 1 P. & D. 62, cited **TESTAMENT**), ‘is the aggregate of his testamentary intentions so far as they are manifested in writing duly executed according to the statute.’ On the other hand, it is equally clear that the testator may, by apt words, express his intention to revoke any codicil already made, and to set up the original will unaffected by any codicil” (*per* Fry J., *Green v. Tribe* 9 Ch. D. 234), or may revoke his will without affecting a codicil thereto (*Farrer v. St. Catherine’s College* L.R. 16 Eq. 19). See further *Green v. Tribe* for a review of the previous authorities.

(2) As to the incorporation of documents with, and by, a will, see **RATIFY**, and *Re Smart* [1902] P. 238, and *Eyre v. Eyre* [1903] P. 131, both cited **RATIFY**; **WISH**; *University College of North Wales v. Taylor* [1908] P. 140; *Re White* [1924] W.N. 332.

(5) A power to appoint personalty “by will” (*Re Price* [1900] 1 Ch. 442), or “by will duly executed” (*D’Huart v. Harkness* 34 L.J. Ch. 311), “means any testamentary instrument recognised by the law of England as a will” (*per* Stirling J., *Re Price* sup.), which includes any will valid according to the law of the testator’s **DOMICIL** at the time of his death (Dicey on the Conflict of Laws, 684, cited and adopted *Re Price*, in which case *Re Kirwan* 25 Ch. D. 373, and *Hummel v. Hummel* [1898] 1 Ch. 642, were discussed); ss.9, 10, Wills Act 1837 (c. 26) have no application to wills of persons domiciled abroad, and therefore, in such cases, if the power requires special solemnities for its execution those requirements must be followed (*Barretto v. Young* [1900] 2 Ch. 339). The execution of a power is not affected by the law of domicile as to the donee’s testamentary capacity (*Pouey v. Hordern* [1900] 1 Ch. 492). See further **WILL ONLY**.

(6) S.27, Wills Act 1837 (c. 26), does not render a general gift valid as an execution of a general power of appointment unless there is (as there was in *Re Price* sup.) an indication on the will that it is to be read with reference to English law (*Re D’Este* [1903] 1 Ch. 898, followed in *Re Scholefield* [1905] 2 Ch. 408; see hereon *Re Harman* [1894] 3 Ch. 607). But see *Re Strong* 95 L.J. Ch. 22. Cp. **WRITING**.

(7) Mutual wills: see *Stone v. Hoskins* [1905] P. 194; *Gray v. Perpetual Trustee Co.* [1928] A.C. 391; *Natal Bank v. Rood* 80 L.J.P.C. 22; *Walker v. Gaskill* [1914] P. 192.

(8) “Soldier’s will”: see *Beech v. Public Trustee and others* 92 L.J.P. 33; Wills (Soldiers and Sailors) Act 1918 (c. 58). See also **ACTUAL MILITARY SERVICE**.

Power to a corporation to acquire land “by will”: see **PURCHASE**.

“At the will of the lord”: see **COPYHOLD**.

“Without a will”: see **INTESTATE**.

“Conditional will”: see **TESTAMENT**.

Stat. Def., Administration of Estates Act 1925 (c. 23), s.55; Land Charges Act 1925 (c. 22), s.20; Land Registration Act 1925 (c. 21), s.3; Law of Property Act 1925 (c. 20), s.205; Judicature Act 1925 (c. 49), s.175; Inheritance (Family Provision) Act 1938 (c. 45), s.5; Wills Act 1963 (c. 44), s.6(1); Supreme Court Act 1981 (c. 54), s.128; Forfeiture Act 1982 (c. 34), s.2.

See **TESTAMENT**; **CODICIL**; **LAST**; **MADE**; **SIGNED**; **WRITING**; **NOMINATE**; **TESTAMENTARY DOCUMENT**; **TESTAMENTARY INSTRUMENT**.

(9) “Will or may” (s.56(2), Stamp Act 1891 (c. 39)): see *Underground Electric Railway v. Inland Revenue Commissioners* [1906] A.C. 21, cited MONEY PAYABLE.

(10) Charter period “will be” exceeded: see *Hector S.S. Co. v. Sovfracht (V.O.) Moscow* [1945] K.B. 343.

(11) Where a company’s articles stipulated that the directors “will take” equally between them, at a fair price, the shares of any member desirous of selling, the word ‘will’ indicated a resultant prospective eventuality in which the directors must buy such shares (*Rayfield v. Hands* [1960] Ch. 1).

(12) “Will . . . become entitled to” (Finance Act 1975 (c. 7), Sched. 5, para. (1)(a)) means “will for certain become entitled” and not “will if no event happens to disentitle him”; so that relief from capital transfer tax in respect of accumulation and maintenance settlements provided by this schedule is not available to settlements where the trustees are empowered to revoke the trusts of the settlement (*Lord Inglewood v. I.R.C.* [1983] 1 W.L.R. 366).

WILL ONLY. If a ‘power to be appoint by ‘will only,’ with remainder over in default of appointment, an immediate disposition cannot be made, and it can only take effect under a will, and after death” (Watson Eq. 847, citing *Socket v. Wray* 4 Bro. C.C. 483; *Reid v. Shergold* 10 Ves. 370; *Bradley v. Westcott* 13 *ibid.* 445; *Anderson v. Dawson* 15 *ibid.* 532).

WILLING. (1) A person is willing to buy property only if he has given irrevocable proof of willingness by entering into a binding contract to purchase (*McCallum v. Hicks* [1950] 2 K.B. 271). An offer to purchase “subject to contract, satisfactory survey and vacant possession” did not show that the offeror was “willing” to purchase (*Graham and Scott (Southgate) v. Oxlade* [1950] 2 K.B. 257). See READY AND WILLING.

(2) (Essential Work (Coalmining Industry) Order 1943 (No. 505), art. 4(1)(d)). An employee was not “willing” to perform services outside his usual occupation if he would only perform them if paid his former wages (*Wassell v. West Cannock Colliery Co.* [1947] K.B. 113).

(3) Value of shares to be ascertained as between a “willing buyer and a willing seller” (Defence (General) Regulations 1939, reg. 78(5)): see *Short v. Treasury Commissioners* [1948] A.C. 534.

(4) Compensation for land purchased or let for mining operations to be assessed “on the basis of what would be fair and reasonable between a willing grantor and a willing grantee” (Mines (Working Facilities and Support) Act 1923 (c. 20), s.9)) see *Re Naylor Benzon Mining Co.* [1950] Ch. 567.

(5) In applying the test of a sale by a willing seller to a willing buyer, in assessing compensation under s.13(4) of the Coal Industry Nationalisation Act 1946 (c. 59), there was no justification for splitting up the compensation unit, fixed by the Minister, into its constituent parts (*Cottages v. Minister of Fuel and Power* [1952] 1 All E.R. 80).

(6) The test of sale in the open market to a willing seller was to be applied in assessing the value of property for compensation under s.2(2) of the Acquisition of Land (Assessment of Compensation) Act 1919 (c. 57): see *Collins v. Feltham Urban District Council* [1937] 4 All E.R. 189; *Wimpey & Co v. Middlesex County Council* [1938] 3 All E.R. 781; *Horn v. Sunderland Corporation* [1941] 2 K.B. 26; see also OPEN, para. (5).

(7) The school “willing to receive” a child (s.11, Elementary Education Act 1876 (c. 79)) had to be named by the complainant (*Thompson v. Rose* 61 L.J.M.C. 26).

WILLINGLY. "If a wife willingly (sponte) leave her husband and go away and continue with her avowtrer," she forfeits her dower (13 Edw. 1, St. 1, c. 34); here 'willingly' "is used in contradistinction to a wife being taken away by force by the adulterer" (*per* Willes J., *Woodward v. Dowse* 31 L.J.C.P. 72), in which case it was held that a wife driven from her home by her husband's cruelty and committing adultery, had 'willingly' left her husband within the statute. See further 2 Inst. 434; Co. Litt. 32 a, b; *ELOPE*.

Cp. **UNWILLINGLY**; **WILFULLY**; **WITTINGLY**.

WIMSEY. A wimsey is a windlass fixed in the ground, and worked 'by a steam engine' for the purpose of drawing materials from the mine (MacS. 246, n. 8, 9; cp. *GIN*).

WIN. (1) "It has been doubted whether the money, etc., must be actually obtained, or whether winning a game by a false pretence would be within the word 'win,' in s.17, Gaming Act 1845 (c. 109), if the loser refused to pay the money" (Steph. Cr. (9th ed.) 358, n. 3, citing *R. v. Moss Dears. & B.* 104). In *R. v. Harris* and *R. v. Turner* [1963] 2 Q.B. 442 it was held that "win" in this section meant "obtain."

(2) "A covenant to 'win' a mineral means *prima facie* to reach it, and put it in such a condition that it may be continuously worked in the ordinary way" (MacS. 219, citing *Lewis v. Fothergill* 5 Ch. 106); following which definition the Court of Appeal said in *Rokeby v. Elliot* (13 Ch. D. 279), "A coalfield is 'won' when full, practicable, available, access is given to the coalhewers so that they may enter on the practical work of getting the coal." See **WORKABLE**; **GET**.

(3) Covenant to "fairly, duly and honestly win, work, recover, obtain, and get the whole of the said mine": see *Watson v. Charlesworth* [1905] 1 K.B. 74; affirmed in House of Lords, *nom. Charlesworth v. Watson* [1906] A.C. 14, following *Walker v. Jefferys* 11 L.J. Ch. 209, and *Jervis v. Tomkinson* 26 L.J. Ex. 21, cited **DUE DILIGENCE**; in *Walker v. Jefferys* the words were that the mine should be "fairly got and regularly worked out to as little disadvantage as possible."

See **WINNING**.

WIND AND WATER TIGHT. (1) At p. 637, Woodf. (10th ed.), it is stated that the obligation on the part of a tenant to keep his tenement "wind and water tight" "ought to be construed strictly in favour of the tenant. To put an example, it would seem that the broken glass of windows need not be replaced by new glass, but that an exclusion of wet by boards or other unsightly modes would be sufficient."

(2) "I think that the expression 'wind and water tight' is of doubtful value and should be avoided": *per* Denning L.J., in *Warren v. Keen* [1954] 1 Q.B. 15.

WINDFALL. (1) A windfall is a timber tree blown down by the wind: the proceeds of windfalls (as between tenant for life and remainderman) should be invested as capital, the annual income generally going to the tenant for life, but who will, under some circumstances, be entitled to have his average annual income from the timber plantation made up, if necessary, out of capital, whilst any excess over such average income arising in consequence of the investment of the proceeds of the windfalls may be ordered to be invested as capital (*Re Harrison* 28 Ch. D. 220); see further *Bateman v. Hotchkin* 32 L.J. Ch. 6; *Tooker v. Annesley* 5 Sim. 235.

(2) As between the heir and the executor a windfall, if severed from the soil, is personalty, if not, it is realty; the question of severance being one fact in the case of each particular tree (*Re Ainslie* 30 Ch. D. 485).

WINDING-UP. (1) The winding-up of the affairs of a company, registered under the Companies Acts, is of three kinds—

(a) Compulsory, or by the court: see hereon Companies Act 1985 (c. 6), ss.512–571.

(b) Voluntary: see hereon Companies Act 1985 (c. 6), ss.572–605; Buckl. 345–365; see *Re National Company for Distribution of Electricity* [1902] 2 Ch. 34. A compulsory winding-up changes the personality of a company, *secus*, of a voluntary winding-up (*Midland Counties District Bank v. Attwood* [1905] 1 Ch. 357, rejecting *Re Imperial Wine Co.*, *Shirreff's Case* L.R. 14 Eq. 417, and discussing *Reid v. Explosives Co.* 19 Q.B.D. 264). See further *Reigate v. Union Manufacturing Co.* 87 L.J.K.B. 724; *Re Havana, etc. Co.* [1916] 1 Ch. 8.

(c) Subject to supervision of the court: see hereon Companies Act 1985 (c. 6), ss.606–610.

(2) As to the construction of surplus assets clause, in a winding-up: see *Birch v. Cropper* 14 App. Ca. 525; *Ex p. Maude* 6 Ch. 51; *Re Anglo-Continental Co.* [1898] 1 Ch. 327; *Re New Transvaal Co.* [1896] 2 Ch. 751, cited SURPLUS. See *Re Ramel Syndicate* [1911] 1 Ch. 749.

(3) “Winding-up” (s.32(4), Building Societies Act 1874 (c. 42)) meant winding-up under the Companies Acts 1862, 1867 (*Re Sunderland Building Society* 21 Q.B.D. 349) or the Companies Winding-up Act 1890 (Building Societies Act 1894 (c. 47), s.8).

(4) A winding-up may be ordered against a building society whose registry has been cancelled under s.6 of the Building Societies Act 1894 (c. 47) (*Re Grosvenor House Property Acquisition, etc., Society* 71 L.J. Ch. 748). See further *Re Ilfracombe Building Society* 70 L.J. Ch. 72, cited FORMED.

(5) So, in a bank charter, though granted before the Companies Act 1862, “winding-up the affairs of the corporation” included a winding-up under the statutory powers for the time being in force, *i.e.* under the Companies Act 1862, and the Acts amending the same (*Re Oriental Bank* 54 L.J. Ch. 481).

(6) “Winding-up of any partnership” (County Courts Act 1888 (c. 43), s.67(7)). There might have been an action or application for the winding-up of a partnership notwithstanding that the alleged partnership was disputed by the defendants (*R. v. Judge Lailey, Ex p. Koffman* [1932] 1 K.B. 568; affirmed *ibid.*, p. 577).

(7) “In the course of winding-up” (Companies Act 1948 (c. 38), s.276(1) (see now Companies Act 1985 (c. 6), s.570)) is not confined to matters arising after a winding-up order has been made, but refers to all matters arising after the presentation of the petition (*Re Dynamics Corporation of America* [1973] 1 W.L.R. 63).

“Beneficial winding-up”: see BENEFICIAL.

See LIQUIDATION; ORDERED; SUPERSEDE.

WINDOW. (1) A plate-glass shop-front, fixed with wooden wedges, without screws, nails or glue, and removable without injury to the premises (whether or not an “improvement”), is a “window” “affixed or belonging” to the premises, within a covenant to deliver up the premises “with all windows,” “improvements,” etc. (*Burt v. Haslett* 25 L.J.C.P. 201). See further IMPROVEMENT.

(2) The sloping glazed top, as well as the glazed vertical side, of a conservatory looking on to adjoining premises, was a “window overlooking” those premises, within a “consent or agreement by writing” (see IN WRITING), under s.3, Prescription Act 1832 (c. 71) (*Easton v. Isted* [1903] 1 Ch. 405); in that case Joyce J., said: “A window is not less a window because it is not capable of being opened, nor is it less a window because the plane in which it is fixed is not vertical. I think the glazed

top was just as much a window as the fixed portions of the vertical side; and, inasmuch as it received light over the defendant's property, I think it 'overlooked' the property in the sense in which that term is used in the agreement." See **LIGHT**.

(3) As to gifts for the repair of a window in a church, see *Hoare v. Osborne* L.R. 1 Eq. 585, cited **CHURCH**.

(4) A landlord's covenant to repair main walls does not include repair of the windows and sashes, although for certain purposes they may be regarded as part of the walls (*Holiday Fellowship v. Hereford* [1959] 1 W.L.R. 211).

See **EXTERNAL PARTS; FIXED AND FASTENED**.

WINDSTORM. As used in a policy of insurance the word is not synonymous with "cyclone" or "tornado" (*Pollock Bros. & Co. v. Halifax Insurance Co.* [1946] 2 D.L.R. 476).

WINE. (1) The admixture of a little water with wine does not prevent its being "wine," within the Rubric to the Communion Office; and, if the mixing be done before the service, the use of such "wine" is not unlawful (*Read v. Lincoln (Bishop)* [1892] A.C. 644); but it is illegal to mix water with the wine during the celebration of the Eucharist (*Martin v. Mackonochie* L.R. 2 A. & E. 116).

(2) "Wine" (s.1. Sale of Beer, etc. on Sunday Act 1847 (c. 49)) included British Wine (*Harris v. Jenns* 30 L.J.M.C. 183).

"Spirits of wine": see **SPIRITS**.

Stat. Def., Customs and Excise Act 1952 (c. 44), s.307; Finance (No. 2) Act 1975 (c. 45), s.14(5); Alcoholic Liquor Duties Act 1979 (c. 4), s.1(4).

WINE CELLARS. A covenant in a lease of cellars under a chapel that they shall be used "as for wine cellars only, and not for interment or burial," is broken by the user of the cellars for the storage and sale of beer and spirits (*Turner v. Marriott Dart*, 873). See **ONLY**.

WING WALL. "Wing wall, ramparts, and side banks" of a bridge: see *A.-G. v. Oxford Canal Navigation* 72 L.J. Ch. 285, cited **BRIDGE**.

WINNING. (1) "Winning and working" (Town and Country Planning General Development Order 1963 (No. 709), Sched. 1, class VIII). A plant used for refining and drying china clay slurry was not "winning and working" the clay within the meaning of this Order (*English Clays Lovering Pochin & Co. v. Plymouth Corporation* [1973] 2 All E.R. 730).

(2) "Winnings" (Betting, Gaming and Lotteries Act 1963 (c. 2), s.55) denotes the money or money's worth which comes to a player over and above what he has staked (*McCullom v. Wrightson* [1968] A.C. 522).

"Winnings," Stat. Def., Gaming Act 1968 (c. 65), s.52; Betting and Gaming Duties Act 1972 (c. 25), s.12.

"Winning or working," Stat. Def., Development Land Tax Act 1976 (c. 24), s.17(7).

WISDOM. "Good wisdom and discretion": see **DISCRETION**.

WISH. (1) Generally, a direction in a will that property is to be distributed or paid in the manner that the testator has directed or wished by word of mouth, is void, as offending against s.9, Wills Act 1837 (c. 26). Thus, where a testator gave his wife a

life interest in his property and added, "I desire and empower her by her will, or in her lifetime, to dispose of my estate 'in accordance with my wishes verbally expressed by me to her,' it was held that that power was void, and that evidence was inadmissible to prove what were the wishes (*Re Hetley* [1902] 2 Ch. 866, distinguishing *Re Fleetwood*, *Sidgreaves v. Brewer* 15 Ch. D. 594; see further *Johnson v. Ball* 21 L.J. Ch. 210). So, a gift to A "for the charitable purposes agreed upon between us" can be explained by extrinsic evidence as regards the charitable purposes intended, but not so as to alter or limit the quality or quantum of the gift (*Re Huxtable* [1902] 2 Ch. 793). Cp. SECRET TRUST; *Blackwell v. Blackwell* [1929] A.C. 318.

(2) Where wishes are expressed in a document, the will sometimes incorporates the document and so gives the wishes validity: see hereon RATIFY; *Re Smart* [1902] P. 238, and *Eyre v. Eyre* [1903] P. 131, both cited RATIFY.

(3) For construction of the words "I wish" in a will, see *Re Burley* [1910] 1 Ch. 215.

WISTA. Half a hide; great wista, a hide (Elph. 630, citing Seebohm, 51; Spelm. *Wista*, where it is said that wista is sometimes used for VIRGATE).

WIT. "To wit": see MEMORANDUM; NAMELY; TO WIT.

See WITE.

WITCH. See CONJURATION.

(1) "Thou art a witch and a sorcerer" was formerly slander, "for if he witcheth men so as they die, it is felony; and if he uses witchcraft in any other manner, he shall stand upon the pillory" (*per* Gawdy J., *John Rogers v. Gravat* Cro. Eliz. 571).

(2) "Thou shalt not suffer a witch to live" (Exodus xxii, 18), which, according to *Rogers v. Gravat*, included a man as well as a woman, but the Revised Version substitutes "sorceress" for "witch."

WITCHCRAFT. See WITCH; 4 B1. Com. 60 *et seq.*

(1) Probably the first Act of Parliament against witchcraft was 33 Hen. 8, c. 8, "ayēst Conjuracons and Wichecraftes and Sorcery and Enchantments."

(2) The later statute law respecting witchcraft was probably begun by 5 Eliz., c. 16, "against Conjuracions, Enchantments, and Witchcrafts," which was repealed by 1 Jac. 1, c. 12, the enactments of which had a like object. The Act of James was repealed by (9 Geo. 2, c. 5), which (by the Short Titles Act 1896) received the title of "The Witchcraft Act 1735," the enacting provisions of which were contained in its 3rd and 4th sections, which remained unrepealed by Statute Law Revision Act 1887 (c. 59), except so much of s.4 as provided the punishment of pillory. These sections were not repealed until 1951 (Fraudulent Mediums Act 1951 (c. 33), s.2(a)). By s.3, Witchcraft Act 1735, no person (after June 24, 1736) was to be prosecuted or sued "for witchcraft, sorcery, inchantment, or conjuration, or for charging another with any such offence"; but (as from that date) by s.4 it was a punishable offence to "pretend to exercise or use any kind of witchcraft, sorcery, inchantment, or conjuration, or undertake to tell fortunes, or pretend, from his or her skill or knowledge in any occult or crafty science, to discover where or in what manner any goods or chattels supposed to have been stolen or lost may be found."

(3) For a conviction for conjuration under the Witchcraft Act 1735 (9 Geo. 2, c. 5), s.4, see *R. v. Duncan* [1944] K.B. 713.

Cp. GYPSIES; ROGUE AND VAGABOND.

WITE. “*Wite, wita*, is an old Saxon word, and signifieth an amerciament; as, *fledwite*, an amerciament for fleeing or being a fugitive; and so is *flemiswite*, *blodwite* and amerciament for drawing of blood, *ferdwite* concerning warfare; and so *letherwite*, *childwite*, *wardwite*, and the like. Sometimes it signifieth forfeiture, sometimes freedom, or acquittall” (Co. Litt. 127 a). See further *Termes de la Ley*, *Bloodwit*, *Childwit*, *Ferdwit*, *Fledwite*, *Fletwit*, *Hangwit*, *Lotherwit*, *Warwit*.

WITH. (1) “‘With’ taken to mean ‘and as incident thereto’ ” (Dwar. 692), citing *Durham Railway v. Walker* 2 Q.B. 966).

(2) “With,” in a devise of a house “with all the household goods therein” so conjoins the goods with the house that the devisee can have no larger interest in the goods than in the house (*Leeke v. Bennett* 1 Atk. 470).

(3) “Twelve months beginning with the date of its issue” (R.S.C., Ord. 6, r. 8(1)). “It is no doubt a pity that this inconvenience should arise from the use in the rule of the word ‘with’ instead of the word ‘from’; but even the shortest single word can affect the whole meaning of any enactment. I do not think that the proposition that a period stated ‘as beginning with’ a certain date does begin on that date it depends on any fine distinction, legal subtlety or empty formality. In my view it depends on the plain and natural meaning of ordinary English words” (*per Salmon L.J. in Trow v. Ind Coope (West Midlands)* [1967] 2 Q.B. 899).

(4) “Gross indecency with another man” (Sexual Offences Act 1956 (c. 69), s.13); “with” means “against” or “directed towards” (*R. v. Hall* [1964] 1 Q.B. 273). The word “with” in the section means that it is necessary to prove the participation and therefore consent of both men for a charge to be successful against either of them (*R. v. Preece*; *R. v. Howells* [1977] Q.B. 370).

(5) “With or towards” (Indecency with Children Act 1960 (c. 33), s.1(1)). These words must be read as a phrase, the words “or towards” explaining the word “with,” so that there is only one offence of gross indecency involving a child (*D.P.P. v. Burgess* [1970] 3 W.L.R. 805).

“Has with him an offensive weapon.” See HAS; HAVE.

See TOGETHER WITH; THEREWITH.

WITH A VIEW. (1) “With a view of giving a preference” to a creditor: see *Re Cohen* [1924] 2 Ch. 515. See VIEW.

(2) “With a view” to the safeguarding of the dye-making industry, within s.1(1), Dyestuffs (Import Regulations) Act 1920 (c. 77): see *Whyte, Ridsdale & Co. v. A.-G.* [1927] 1 Ch. 548.

(3) “With a view to adoption” (Adoption Act 1958 (c. 5), s.52(1)) has a broad meaning and covers not only removals from the country for the immediate purpose of adoption, but also to removals where the prime purpose is to have the child under care before returning it to this country preparatory to making an application for adoption. (*Re M.* [1973] 2 W.L.R. 515).

See A.

WITH ALL CONVENIENT SPEED. See CONVENIENT SPEED.

WITH ALL DESPATCH. See CUSTOMARY; DESPATCH.

WITH ALL FAULTS. See FAULTS.

WITH ALL LIBERTIES. (1) An original grant of a fair, “with all liberties” merely, does not include tolls, for toll is not incident to a fair; but when toll, by grant or

prescription, is payable in respect of a fair, and the fair becomes forfeited to the Crown by whom it is re-granted “*cum omnibus libertatibus ad hujusmodi feriam spectantibus*,” there toll passes (*Heddy v. Wheelhouse* Cro. Eliz. 591).

(2) So, a grant of a market, “with all liberties and free customs to such a market belonging,” does not give the right to prevent tradesmen from selling, on market days, marketable articles in shops within the limits of the franchise; though the grantees may acquire such a right by prescription, or, *semble*, it might have been granted by apt words in the charter (*Penryn v. Best* 3 Ex. D. 292).

See CUSTOM; TOLL.

WITH ALL MINES. “Where a man has unopened mines within his land, and demises for life or years such land ‘with all mines therein,’ the lessee may, *prima facie*, as between himself and his grantor, dig the unopened mines and will not, by so doing, commit WASTE (*Saunders’ Case* 5 Rep. 12 a; Co. Litt. 54 b; *Darcy v. Askwith* Hob. 234; *Clegg v. Rowland* L.R. 2 Eq. 160); for otherwise the words ‘with all mines therein’ would have no effect (Co. Litt. 54 b)”; MacS. (5th ed.) 48. See *Boileau v. Heath* [1898] 2 Ch. 301, cited IRON.

See MINE.

WITH EFFECT. See EFFECT.

WITH FORCE AND ARMS. See FORCE.

WITH INTENT. (1) As to the result of omitting the words “with intent to defraud,” in an indictment: see *R. v. Fraser* 93 L.J.K.B. 236.

(2) The words “with intent to avoid payment” (London Passenger Transport Act 1936 (c. cxxxi), s.91(2)) do not necessarily import a dishonest intention, but merely that the passenger intended not to pay what in fact turned out to be the proper fare (*Covington v. Wright* [1963] 2 Q.B. 469).

(3) “With intent to stir up hatred” (Race Relations Act 1965 (c. 73), s.6(1)). Leaving a pamphlet at the door of an M.P.’s house was not a distribution “with intent to stir up hatred” within the meaning of this section (*R. v. Britton* [1967] 2 Q.B. 51).

WITH LEAVE. A child suspended from school because of his parent’s refusal to return him to the school was not absent “with leave” within the meaning of s.39 of the Education Act 1944 (c. 13) (*Happe v. Lay* (1977) 76 L.G.R. 313).

WITH RESPECT TO. See IN RESPECT OF; THERETO, para. (2).

WITH THE APPURTENANCES. See APPURTENANCES; WAYS.

WITHDRAW. (1) An agreement by a partner to “withdraw from the firm” means to withdraw at once; and it further means, (a) “that the withdrawing partner shall make over to the continuing partners all his interest in the partnership and in the partnership assets, whether there be real or personal estate, whether there be outstanding contracts, or anything of the kind”; (b) “that the continuing partners shall indemnify the retiring partners against all the liabilities of the firm from that time forth. They take the assets, they take the benefit of the contracts, they take the chances of success for the future, and they must keep him indemnified” (*per Kekewich J.*, *Gray v. Smith* 58 L.J. Ch. 805; affirmed 43 Ch. D. 208); but an agree-

ment to “withdraw” (without more) does not imply that the continuing partner is entitled to continue to use the withdrawing partner’s name (*ibid.*). Cp. ASSETS. See GOODWILL.

(2) A lessee’s covenant, in a lease of licensed premises, to afford no ground for “discontinuing,” “withdrawing,” or “withholding” the licence, “applies indiscriminately to a case of forfeiture and a case of non-renewal” (*per* Lord Macnaghten, *Bryant v. Hancock* [1898] 1 Q.B. 716, cited ASSIGNS).

(3) An agreement to withdraw a petition for judicial separation means that the petition will be dismissed by consent (*Goldblum v. Goldblum* [1939] P. 107).

See WITHDRAWN.

WITHDRAWAL. (1) “Withdrawal” member of a building society: see *Re Norwich & Norfolk Building Society* 45 L.J. Ch. 785; see thereon *per* Selborne C., *Walton v. Edge* 10 App. Ca. 39. See also *Re Sunderland Building Society* 24 Q.B.D. 394. See MEMBER; UNADVANCED.

(2) As to the incidence of a bank’s withdrawal fee or income fee, see *Re Godwin* [1938] Ch. 341.

WITHDRAWN. Execution “withdrawn, satisfied, or stopped” (Sheriffs Fees Order, August 31, 1888): see *per* Esher M.R., *Lee v. Dangar* [1892] 2 Q.B. 337.

WITHHELD. (1) If a licence or permission is “not to be withheld” if a prescribed condition is complied with, that means that “it shall be given” on such compliance (*per* Kay L.J., *Perls v. Saalfeld* [1892] 2 Ch. 149; but see *Treloar v. Bigge* L.R. 9 Ex. 151, cited UNREASONABLY).

(2) Where a renewal of planning permission was granted two days after the expiry of the existing permit, it was held that permission had not been “withheld” within the meaning of a clause in a lease (*Bewick v. Bailey’s Casinos* (1973) 227 E.G. 1167).

WITHHOLD. (1) A person having possession of the property of a friendly society did, *prima facie*, “withhold or misapply” it (s.16(9)), Friendly Society Act 1875 (c. 60) if he did not properly account for it (*R. v. Bennett* 63 L.J.M.C. 181); but the presumption might be rebutted, for the withholding had in some way to partake of fraud (*per* Willes J., *Barrett v. Markham* L.R. 7 C.P. 405; see further *Scott v. Wilson* 9 T.L.R. 492).

(2) So, to “wilfully withhold or fraudulently misapply” the property of a trade union (Trade Union Act 1871 (c. 31), s.12) connoted some fraud or dishonesty in the withholding (*Madden v. Rhodes* [1906] 1 K.B. 534, following *Barrett v. Markham* *sup.*).

(3) The offence (Trade Union Act 1871 (c. 31), s.12) of “wilfully withholding” money belonging to a trade union did not involve continuous possession of the money up to the time of the charge; money taken and squandered was “withheld” (*Best v. Butler and Fitzgibbon* [1932] 2 K.B. 108).

(4) “Withholding by the engineer of any certificate” (Institution of Civil Engineers’ General Conditions of Contract (4th ed.), cl. 66). The rejection by the engineer of the plaintiff’s claim to be paid during the currency of the contract for certain work of excavation, was a “withholding” with the clause (*Farr (A. E.) v. Ministry of Transport* [1960] 1 W.L.R. 956).

“Withholding” a licence: see *Bryant v. Hancock*, cited WITHDRAW.

WITHIN. (1) “The word ‘within’ in relation to a period of time does not usually mean ‘during’ or ‘throughout the whole of’; it is more frequently used to delimit a period ‘inside which’ certain events may happen” (*per* O’Byrne J., in *Reynolds v. Reynolds* [1941] V.L.R. 249).

(2) Where something is to be done “within” a stated time “before” a stated date, that means that it is to be done at some time during the course of the stated time immediately preceding the stated date (*Thomas v. Lambert* 4 L.J.K.B. 153). See **IN**; **CALENDAR MONTH**; **MONTH**; **REASONABLE TIME**; **TIME**; **WEEK**; **YEAR**.

(3) “Within due time after my death.” This expression in a devise to the sons of another person “whether born in my lifetime or within due time after my death” was construed as “within the period of gestation” and not as referring to the period allowed by the rule against perpetuities (*Re Watson* [1930] 2 Ch. 344).

(4) “Within” so many days “after” an event, means days exclusive of the day of the event (*Williams v. Burgess* 10 L.J.Q.B. 10; *Robinson v. Waddington* 18 L.J.Q.B. 250; *Radcliffe v. Bartholomew* [1892] 1 Q.B. 161, cited **CALENDAR MONTH**; *Stewart v. Chapman* [1951] 2 K.B. 792). So, of “not exceeding” so many days “from” the event (*Frew v. Morris* 34 Sc. L.R. 527); see further **NOT LESS**.

(5) “Within four months” (Companies Act 1985 (c. 6), s.428(1)). “To say that something must be approved within four months appears to me to allow any date within that period to be fixed for such approval” (*per* Wynn-Parry J., in *Re Western Manufacturing (Reading)* [1956] Ch. 436).

(6) “Within three years” (Taxes Management Act 1970 (c. 9), s.103(1)) means “not later than three years” (*R. v. I.R.C., ex p. Knight* [1973] 3 All E.R. 721).

(7) Where a statute gave power to assess, for expenses of road-repair, all premises “within” certain streets, it was held that a yard—Kent and Essex Yard, White-chapel—set back from one of such streets, and having other houses between it and the street, but the only access to which was from the street by means of carriage gates and along a private covered way, was “within” the street (*Baddeley v. Gilling* 1 Ex. 319). In that case, Alderson B., said, “You cannot say that any house is literally ‘within’ the street, and we must therefore come to the consideration of what is intended by the expression ‘within’ ”; the yard was held (see especially judgment of Parke B.) to be “within” the street, because its sole communication was by means of the street, and because it “fronted” and “abutted on” and derived the benefit of repairs to, the street.

(8) Within the curtilage: see *Pilbrow v. St. Leonards* [1895] 1 Q.B. 33, 433, cited **CURTILAGE**.

(9) Within a stated distance: see *R. v. Saffron Walden* 9 Q.B. 76.

(10) Debts within a stated locality: see **IN**; *Re Clark* [1904] 1 Ch. 294, cited **IN**.

(11) “Within such district”: see *Manchester Carriage Co. v. Swinton* 90 L.T. 795, affirmed House of Lords [1906] A.C. 277, cited **USED**.

(12) Salvage of life “within the limits of the United Kingdom” (s.458, Merchant Shipping Act 1854 (c. 104), and s.544, Merchant Shipping Act 1894 (c. 60)): see *The Johannes* 30 L.J.P.M. & A. 91; *The Pacific* [1898] P. 170, cited **PART**.

(13) Trade “exercised within the United Kingdom” (s.2, Sched. D, Income Tax Act 1853 (c. 34)): see *per* Lord Herschell, *Grainger v. Gough* [1896] A.C. 335.

“Within three months before the petition”: see **BEFORE**.

“Within” two named times: see **FROM**.

“At or within”: see **AT**.

Cp. **AT LEAST**; **CLEAR**; **INTERVAL**; **FORMING**; **FRONTING**; **IN**; **NAVIGATING WITHIN**.

WITHIN HIS PARISH. See **CLERGYMAN**.

WITHIN OR UNDER. (1) It seems difficult to see how a grant of “minerals” “within or under” land is fuller, and less liable to receive a restricted meaning, than if “under” alone were used; but this suggestion has been made (*per* Romilly M.R., *Midland Railway v. Checkley* L.R. 4 Eq. 25; observed upon by Wickens V.-C., *Hext v. Gill* 7 Ch. 705, n.; see further MacS. 13).

(2) For an example of construction of “under” in such a connection: see *Chamber Colliery Co. v. Rochdale Canal Co.* [1895] A.C. 564, on which case see *New Moss Colliery Co. v. Manchester, Sheffield & Lincolnshire Railway* [1897] 1 Ch. 725.

WITHIN THE JURISDICTION. (1) “Within the jurisdiction” (R.S.C., old Ord. 11, r. 1) means territorial jurisdiction (*Re Smith* 1 P.D. 300; *The Vivar* 2 P.D. 29).

(2) Contract which “ought to be performed within the jurisdiction” (R.S.C., old Ord. 11, r. 1(g)): see *Hassall v. Lawrence* 4 T.L.R. 23; *Robey v. Snaefell Co.* 57 L.J.Q.B. 134; *Wancke v. Wingren* 58 *ibid.* 519; *Reynolds v. Coleman* 56 L.J. Ch. 903; *Fry v. Raggio* 40 W.R. 120; *Hoerter v. Hanover Caoutchouc Co.* 10 T.L.R. 103; MADE; TERMS. See further *Duval Co. v. Gans* [1904] 2 K.B. 685; *Hemelrych v. William Lyall Shipbuilding Co.* [1921] 1 A.C. 698.

(3) “Contract made within the jurisdiction”: see *British Controlled Oilfields Ltd. v. Stagg* [1921] W.N. 319; *Bowling v. Cox* [1926] A.C. 751.

(4) Crimes “committed within the jurisdiction of either of the high contracting parties” (s.1, Extradition Act 1843 (c. 76)) meant committed within the peculiar jurisdiction of one of those parties, as distinct from a common jurisdiction (*Re Tivnan* 33 L.J.M.C. 201, cited PIRACY).

See CARRY ON.

WITHIN THE REALM. See REALM.

WITHIN THE SYSTEM. See ARISING.

WITHOUT AFFECTING. Power to determine works contract “without thereby affecting in any other respects the liability of the contractor”: see *Re Yeadon Waterworks Co. and Binns* 98 L.T. 473.

WITHOUT ANY DEDUCTION. “Without any deduction except for death duties” see *Re Portman (Viscount)* [1922] 2 A.C. 473, cited HEIR.

WITHOUT BEING MARRIED. *Semble*, is synonymous with “UNMARRIED.”

See WITHOUT HAVING BEEN MARRIED.

WITHOUT BENEFIT OF CLERGY. Before benefit of clergy was abolished altogether it had for a long time been a frequent practice in statutes to prescribe that the felonies thereby respectively created or defined should be “without benefit of clergy,” *i.e.* that the culprit should not be able to “pray his clergy.” See hereon 4 Bl. Com. ch. 28.

WITHOUT BENEFIT OF SALVAGE. (1) A policy on profits was within Marine Insurance Act 1746 (c. 37), s.1; and if made “without benefit of salvage,” although “free from average,” it was avoided (*De Mattos v. North* L.R. 3 Ex. 185, following *Smith v. Reynolds* 25 L.J. Ex. 337; see FULL INTEREST ADMITTED).

(2) A policy “without benefit of salvage,” omitting the words “to the insurers,” is within the prohibition of the Act (*Allkins v. Jupe* 2 C.P.D. 375).

See GAMING CONTRACT; HONOUR; INTEREST.

WITHOUT CHILDREN. See DIE WITHOUT CHILDREN.

WITHOUT DANGER. S. 422, Merchant Shipping Act 1894 (c. 60), see *The San Onofré* 92 L.J.P. 17.

WITHOUT DAY. “To be dismissed without day is to be finally discharged by the court” (Cowel, *Day*, citing Kitchen, fo. 193). “To be discontinued and to be put without day, is all one” (Termes de la Ley, *Discontinuance*). But this seems too broadly stated, and, *semble*, to be dismissed without day means to be dismissed without any time being named to appear again. Thus, in *Goddard v. Smith* (6 Mod. 261), Holt C.J., said, “the entering a *nolle prosequi* was only putting the defendant *sine die*, and, so far from discharging him from the offence, that it did not discharge any further prosecution upon that very indictment, but that, notwithstanding, new process might be made out upon it.”

WITHOUT DEDUCTION FOR INCOME TAX. Means free of income tax (*Re Williams* [1936] Ch. 509). See also DEDUCTION.

WITHOUT DELAY. See PROSECUTE.

WITHOUT DISPUTE. An agreement to accept a title “without dispute,” or “such as the vendor has,” will preclude objections (Dart, 169); *secus*, if the vendor has no title at all, for he must at least show a bona fide title (*Keyse v. Hayden* 20 L.T.O.S. 244).

WITHOUT HAVING BEEN MARRIED. (1) This phrase, as frequently employed, excludes the husband, but not the descendants of the woman spoken of (*Wilson v. Atkinson* 33 L.J. Ch. 576; *Re Ball* 11 Ch. D. 270; *Upton v. Brown* 12 Ch. D. 872; *Re Arden* 35 S.J. 70; *Stoddart v. Savile* [1894] 1 Ch. 480; *Re Forbes* [1899] W.N. 6). But the contrary was held by Jessel M.R., who said that the phrase is unambiguous and means as if the woman had died a spinster (*Emmins v. Bradford* 13 Ch. D. 493; see further *Re Watson* 55 L.T. 316). The Court of Appeal approved *Emmins v. Bradford* saying that the cases here previously cited went upon the context (*Re Brydone* [1903] 2 Ch. 84, which approved *Re Smith* [1903] 1 Ch. 373, and overruled *Re Mare* [1902] 2 Ch. 112; and was followed in *Re Ellis, Wasbrough v. Boyce* [1922] 1 A.C. 425, cited SPINSTER).

(2) The previous cases cited sup. (except *Re Watson*) were on marriage settlements, in which cases the general opinion was that the presumption in favour of not excluding children was so strong as to amount to a hard-and-fast rule. The exact decision of the Court of Appeal in *Re Brydone* was that there was no such rule even as to marriage settlements, and the court in that case (as Swinfen Eady J., had done in *Re Smith*) found a context from which “die without having been married” was held to its natural meaning of “die a spinster,” and so to exclude children. *Re Watson* was the case of a will, and there Chitty J., said that in that case there was no presumption to alter the natural meaning, and in fact there was no context to work such an alteration.

(3) It is submitted that the rule hereon may now be stated thus: A provision that in case a woman dies “without having been married” means if she dies a spinster, unless there be a context which confines the phrase to connote the exclusion of the

marital right; that context would be more easily found in a marriage settlement than in any other document and, possibly, in a marriage settlement it would not exclude children unless there be some context in that direction.

(4) There seems no doubt that “without being married” means without having a husband at the time spoken of (*Re Norman* 22 L.J. Ch. 720). See hereon *Hardman v. Maffett* 13 L.R. Ir. 499; *Re Deane* [1900] 1 I.R. 333, which case followed *Hardman v. Maffett* and distinguished *Stoddart v. Savile* sup.

(5) For an elaborate and carefully reasoned treatment by Mr. Vaizey of the phrase, “As if she had died intestate and without having been married”: see 47 S.J. 64, 85, and 105.

(6) Instead of “without having been married,” it is suggested that the phrase should be “without leaving a husband her surviving.”

Cp. UNMARRIED.

WITHOUT IMPEACHMENT OF WASTE. (1) Where a term, life interest, or other qualified ownership is “without impeachment of waste,” such an owner is not liable for waste, and may do waste (other than equitable waste) and convert it at his own pleasure (*Bowles’ Case* 11 Rep. 79).

(2) Leases under s.46, Settled Estates Act 1877 (c. 18), had to “be not made without impeachment of waste”; such a lease requiring the lessee to deliver up the premises in good repair, “fair wear and tear and damage by tempest excepted,” offended against that condition and was invalid; because a tenant for years, in the absence of stipulation, was liable even for permissive waste (*Yellowly v. Gower* 11 Ex. 274, inf.), from which such an exemption would have exempted him (*per Kekewich J.*, *Davies v. Davies* 38 Ch. D. 499, adopting *Yellowly v. Gower* 11 Ex. 274, notwithstanding that in *Woodhouse v. Walker* 5 Q.B.D. 407, the point decided in *Yellowly v. Gower* was treated as an open one; see also *Barnes v. Dowling* 44 L.T. 809. In Woodf. (24th ed.) 739, *Yellowly v. Gower* is spoken of “as having been too long accepted to be now overruled”).

See hereon *Downshire v. Sandys* 6 Ves. 107; *Termes de la Ley*, *Impeachment of Wast*.

See FULL AND ABSOLUTE; IMPEACHABLE; IMPEACHMENT; STRICT SETTLEMENT; WEAR AND TEAR.

WITHOUT INTERRUPTION. See INTERRUPTION.

WITHOUT ISSUE. See DIE WITHOUT ISSUE; LEAVING; *Re Milling’s Settlement* [1944] Ch. 263.

WITHOUT LEAVE. “Absence without leave”: see ABSENCE. Cp. WILFUL DISOBEDIENCE.

WITHOUT LEAVING ISSUE. See *Re Davey* [1915] 1 Ch. 837, cited ISSUE; DIE WITHOUT ISSUE; LEAVING.

WITHOUT PREJUDICE. (1) A letter “without prejudice” cannot be treated “as an admission of right”; and though *Kindersley V.-C.*, said, “the party writing it can use it against the other on the question of costs” (*Williams v. Thomas* 31 L.J. Ch. 676; see also *Jones v. Foxall* 21 L.J. Ch. 725), yet it was afterwards held by the Court of Appeal (questioning *Williams v. Thomas*), that a letter written “without prejudice” cannot be looked at as furnishing good cause for depriving a successful litigant of costs (*Walker v. Wilshire* 23 Q.B.D. 335). This, in effect, seems to estab-

lish the principle that a letter “without prejudice” cannot be read without the consent of both parties (see hereon 34 S.J. 56). It cannot be used as an acknowledgment of a debt, within the Limitation Act 1623 (c. 16), or such like enactment (*Cory v. Bretton* 4 C. & P. 462; *Re River Steamer Co.* 6 Ch. 822). It cannot be used to prove that a claim for compensation under the Workmen’s Compensation Acts has been made within six months: see *Bishop v. Civil Service Supply Association* [1922] W.C. & Ins. Rep. 194. “From those cases it seems to me that the principle which emerges is that the court will protect, and ought to protect so far as it can, in the public interest, ‘without prejudice’ negotiations because they are very helpful in the disposal of claims without the necessity for litigating in court” (*per* Ormrod J., in *Tomlin v. Standard Telephones and Cables* [1969] 1 W.L.R. 1378).

(2) But, even as regards the rights between the parties, a letter “without prejudice” is only admissible so long as it relates to a negotiation; when the negotiation is closed by an agreement, the privilege ceases (*Holdsworth v. Dimsdale* 19 W.R. 798; *Re Leite* 72 L.T. 97). See further *Hoghton v. Hoghton* 15 Bea. 278; *Paddock v. Forrester* 3 M. & G. 903; *Grace v. Baynton* 21 S.J. 631. A letter marked “without prejudice” can only be used in two cases: (1) in criminal matters; (2) when it contains an offer which has been accepted: see *Bishop v. Civil Service Supply Association* (sup.).

(3) The general principle with regard to letters written “without prejudice” applies as much for the protection of a solicitor as for his client: see *La Roche v. Armstrong* [1922] 1 K.B. 485.

(4) The admissibility of letters written “without prejudice” is to be determined when the matter comes on to be heard, not on an application under the old R.S.C., Ord. 38, r. 11, now Ord. 41, r. 6: see *Re Jessopp* 54 S.J. 543.

(5) The whole of a negotiation is covered if its commencement is “without prejudice” (*Ex p. Harris* 10 Ch. 264; *Thomson v. Austen* 2 D. & R. 361).

(6) As to effect of “without prejudice” in a reply to a requisition on title: see *Morley v. Cook* 2 Hare, 106.

(7) Threat of legal proceedings (s.32, Patents, Designs and Trade Marks Act 1883 (c. 57)), “without prejudice”: see *Kurtz v. Spence* 57 L.J. Ch. 238, cited THREAT. See Patents Act 1949 (c. 87), s.65.

(8) A notice of suspension of payment (see NOTICE) is admissible as an act of bankruptcy, although given “without prejudice” (*Ex p. Holt, Re Daintrey* [1893] 2 Q.B. 116).

(9) In a power in a charterparty to give bills of lading, “the meaning of ‘without prejudice to the charterparty’ has been settled by *Shand v. Sanderson* (28 L.J. Ex. 278) and *Gledstanes v. Allen* (12 C.B. 202), and is that, notwithstanding any engagements made by the bills of lading, the contract between the parties to the charter is to stand unaltered” (*per* Esher M.R., *Hansen v. Harrold* [1894] 1 Q.B. 612), and this definition was applied in *Turner v. Haji Goolam Mahomed Azam* [1904] A.C. 837; cp. CONDITIONS AS PER CHARTERPARTY; *Wilson v. Playle* 88 L.T. 554, cited WRITTEN WARRANTY. See further *Reynolds v. Jex* 34 L.J.Q.B. 251; *The Canada* 13 T.L.R. 238.

(10) A consent order “without prejudice to any question between the parties” leaves all legal claims and disputes *in statu quo* (*Peruvian Guano Co. v. Dreyfus* [1892] A.C. 166.).

(11) Payments to a workman under Workmen’s Compensation Act 1897 (c. 37), “without prejudice”: see *Oliver v. Nautilus Steam Shipping Co.* [1903] 2 K.B. 639, cited OPTION. See further *Hulton & Co. v. Chadwick and Taylor* 35 T.L.R. 620, for the meaning of these words in a commercial contract.

(12) A certificate awarding compensation under the Workmen's Compensation Act 1906 (c. 58) was final, and the judge had no jurisdiction to grant it "without prejudice" to the plaintiff's right of appeal: see *Harrison v. Wythemoor Colliery Co. Ltd.* [1922] 2 K.B. 674.

(13) Where a workman, on receiving payments under the Workmen's Compensation Acts, gave receipts "without prejudice," it was inferred that the employers agreed with him that the payments were made and received without prejudice to his rights at common law (*Unsworth v. Elder Dempster Lines Ltd.* [1940] 1 K.B. 658).

(14) "Without prejudice to any civil liability," in s.6, Fertilisers and Feeding Stuffs Act 1906 (c. 27): see *Anderson Ltd. v. Daniel* [1924] 1 K.B. 138. But s.1(2), Fertilisers and Feeding Stuffs Act 1926 (c. 45), overruled this case.

(15) For the meaning of the phrase "without prejudice to the remedies of either of the parties hereto," in a lease, see *Burch v. Farrow's Bank Ltd.* [1917] 1 Ch. 606.

(16) Where negotiations for the settlement of a valuation case take place "without prejudice," any offer made must be disregarded as evidence of value (*Dundee Assessor v. Elder* (1962), 4 R.I.C.S. 39 (No. 104)).

See WITHOUT AFFECTING.

WITHOUT REASONABLE OR PROBABLE CAUSE. See DEMAND.

WITHOUT RECOURSE. See SANS RECOURS.

WITHOUT RESERVE. (1) When an auction is advertised as being made "without reserve," the vendor cannot bid; and if he bids, or employs anyone to bid, the sale is void at the election of the purchaser (*Meadows v. Tanner* 5 Mad. 34; *Thornett v. Haines* 15 L.J. Ex. 230; *Robinson v. Wall* 16 L.J. Ch. 401; *Warlow v. Harrison* 29 L.J.Q.B. 14. See also Sale of Land by Auction Act 1867 (30 & 31 Vict., c. 48), ss.4, 5).

(2) But in *Warlow v. Harrison* (sup.) the majority of the court (Martin and Watson BB., and Byles J.) went further, and held that an auctioneer who puts up property for sale "without reserve" "pledges himself that the sale shall be without reserve, or (in other words) contracts that it shall be so; and that this contract is made with the highest bona fide bidder, and in case of a breach of it that he has a right of action against the auctioneer." But, though this was a decision of the Exchequer Chamber, Blackburn J., in delivering the judgment of the Queen's Bench in *Mainprice v. Westley* (34 L.J.Q.B. 229), pointed out that the ultimate decision in *Warlow v. Harrison* turned rather on a matter of pleading and said, "We do not think, therefore, that we are precluded by it as a judgment of a court of error"; and accordingly in *Mainprice v. Westley* the court, without saying whether or not the vendor would be liable "as for a breach of contract" if he authorised biddings in a "peremptory" sale, held, that the auctioneer at such sale would not be liable when acting without deceit and professedly only as an agent; but see as to the auctioneer's liability generally, *Williams v. Millington* 1 Bl. H. 81, applied in *Woolfe v. Horne* 2 Q.B.D. 355, which last case was preferred to *Mainprice v. Westley* (sup.) in *Rainbow v. Howkins* [1904] 2 K.B. 322; *McManus v. Fortescue* [1907] 2 K.B. 1.

(3) The authority of *Warlow v. Harrison* on the question whether a "peremptory" sale, or a sale "without reserve," gives positive contractual rights, was further impaired by *Harris v. Nickerson* (L.R. 8 Q.B. 286), in which it was held that an advertisement of an intended auction gives no contractual rights to persons who are put to expense in travelling to attend the auction, and who are disappointed by

reason of the sale being at the last moment withdrawn (Add. C. 12). In that case Quain J., said, "*Warlow v. Harrison* has not been considered a satisfactory decision." If no contractual rights arise by reason of the withdrawal of an auction, it seems difficult to see how the case is altered, in favour of the highest bona fide bidder who must be unknown at the commencement of the sale, by the sale being advertised as "peremptory" or "without reserve." A sale "without reserve" might, it seems clear, be withdrawn altogether. If it proceeds, why may it not be withdrawn at any time until an actual contract is made? And if it may be so withdrawn, how can contractual rights arise in favour of one of what may be a large company when all that can be said is that his bidding is prevented from being the highest, and he himself is prevented from being a contracting party, by the intervention of the intending vendor? But see Add. C. 445.

(4) *Seemle*, unless a sale is expressed to be "without reserve" it is implied that there will be a reserve price (*Mortimer v. Bell* 34 L.J. Ch. 360).

(5) By s.58(4), Sale of Goods Act 1893 (c. 71), an auction of goods "may be notified to be subject to a reserved or upset price"; but, *seemle*, a reserved price unnotified is not prohibited or penalised, nor are the cases cited above on "without reserve" affected.

Sale to "highest bidder": see HIGHEST.

See RESERVED BIDDING.

WITHOUT RISK. (1) Where a lighter was let out "without risk of craft" and the goods on board were damaged by sea-water, the owner was held not liable for the loss (*Webster v. Bond* Cab. & El. 339). In that case, Mathew J., said, "I think the words 'without risk of craft' mean without risk or liability to the owner of the craft." See RISK.

(2) Investments to be made "without risk to the trustees": see *Rochfort v. Seaton* [1896] 1 I.R. 18.

WITHOUT SUFFICIENT CAUSE. See SUFFICIENT CAUSE.

WITNESS. (1) The witness to an instrument requiring attestation must not be a party thereto (*Seal v. Claridge* 7 Q.B.D. 516; *Re Parrot, Ex p. Cullen* [1891] 2 Q.B. 151).

(2) A blind person cannot be a witness to the signing of a will (*Re Gibson* [1949] P. 434).

"To witness": see ATTEST.

Stat. Def., Costs in Criminal Cases Act 1952 (c. 48), ss.1, 5; Courts Act 1971 (c. 23), s.47(7).

See COMPELLABLE; COMPETENT; CREDIBLE WITNESS.

WITTINGLY. Where a statutory offence is for something done "wittingly, willingly, or knowingly," those words denote that the act must be "done with a conscious mind that the party is doing wrong" (*per* Tenterden C.J., *Meirelles v. Banning* 2 B. & Ad. 909).

WOMAN. A power to A of jointuring "any woman he may marry" may be exercised in favour of a woman married to him during his divorced first wife's lifetime, although he had already appointed a jointure to such first wife (*Marlborough v. Marlborough* [1901] 1 Ch. 165).

“Married woman”: see MARRY.

When woman presumed past childbearing: see PRESUMPTION.

Womanly delicacy: see DELICACY.

Stat. Def., Factories Act 1961 (c. 34), s.176(1); Equal Pay Act 1970 (c. 41), s.11.

See FEME; GIRL; MAN; LEGAL INCAPACITY; NEIFE; PROHIBITED; WAIVE; YOUNG PERSON.

WOOD; WOODS. (1) “Wood, *boscus*, contains timber or hautboys and underwood or subboscus. Both the trees and the soil itself on which they stand pass by the grant of a wood or boscus (Co. Litt. 4 b; see hereon *Doe d. Kinglake v. Beviss* 18 L.J.C.P. 128; SEA GROUNDS). In like manner by an exception in a lease of the woods and underwoods growing or being on the property demised, the soil itself on which they grow is excepted (*Ive’s Case* 5 Rep. 11 a; *Hide v. Whistler* Pop. 146; *Whistler v. Paslowe* Cro. Jac. 487). On the other hand, by an exception of ‘trees’ (*Liford’s Case* 11 Rep. 46 b), ‘saleable underwoods’ now growing on the premises (*Pincombe v. Thomas* Cro. Jac. 524), the soil itself is not excepted. See *Glover v. Andrew* 1 And. 7” (Elph. 631). But in *Legh v. Heald* (1 B. & Ad. 622) it was pointed out that in *Whistler v. Paslowe* (sup.) the lease was of a manor, and (referring to the proposition for which *Liford’s Case* is above cited) it was held in *Legh v. Heald* that, where the leading words of the clause were “timber and other trees” which were followed by “wood and underwoods,” the soil was not included in the latter phrase.

See further TREES; SEASONABLE WOOD; Touch. 94, 95; *Stanley v. White* 14 East, 332; see also ORNAMENTAL TIMBER; TIMBER.

(2) Lease of “woods, groves, hedgerows, and springs,” by a chapter, that had no right to fell timber except for repairs, gave lessee no right to fell timber (*Herring v. St. Paul’s* 3 Swanst. 492). See further TIMBER.

(3) By a lease of “woods and underwoods” upon premises demised, with the right to cut down and carry away the same, hedgerows pass (4 Leon. 36).

(4) Profits of a wood: see *Anon.* 4 Leon. 8, cited PROFITS.

(5) A statutory power to a company to “pave with wood” certain portions of the roads does not authorise it to create a nuisance by using blocks of wood impregnated with creosote: see *Ward v. Bristol Tramways Co.* [1908] 2 K.B. 14.

“Woods and forests.” Stat. Def., Forestry (Transfer of Woods) Act 1923 (c. 21), s.7.

“Woodland.” Stat. Def., Rating and Valuation Act 1925 (c. 90), s.68; Agriculture Act 1967 (c. 22), s.57.

WOODGELD. “‘Woodgeld’ seemeth to bee the gathering or cutting of wood within the forrest, or money payd for the same to the forresters. And the immunity from this by the Kings grant is, by Crompt. f. 197, called woodgeld” (Termes de la Ley).

WOOLLEN. See MATERIALS.

WORD. “Word” (s.64(e), Patents, Designs, and Trade Marks Act 1883, amended by s.10, Act of 1888 (c. 50)) includes words in foreign characters, e.g. Burmese (*Re Dewhurst* [1896] 2 Ch. 137), or the name of an imaginary person, e.g. Trilby (*Re Holt* [1896] 1 Ch. 711, Kay, L.J., dissenting). See Trade Marks Act 1938 (c. 22), s.9. See DISTINCTIVE; FANCY WORD; INDIVIDUAL; SPECIAL; TRADE MARK.

WORDS. “Action upon the case for words” (s.3, Limitation Act 1623 (21 Jac. 1, c. 16)) relates to ordinary slander *per se*, and does not comprise an action for libel or for slander of title (*Law v. Harwood* Cro. Car. 141), nor for a slander sustainable only when there is special damage (*Saunders v. Edwards* 1 Sid. 95). Cp. Limitation Act 1939 (c. 21), s.2.

“By words only”: see **ONLY**.

Stat. Def., Defamation Act 1952 (c. 66), s.16(1); Theatres Act 1968 (c. 54), s.4(3).

See **GENERAL WORDS**.

WORDS OF ART. “Words of art” are those words which have a definite and fixed legal meaning, and for which so-called equivalents are seldom admitted, and which are only with difficulty controlled by the context, *e.g.* BURGLARY; FELONY; MURDER; RAPE; RAVISH; REAL ESTATE; REMAINDER; SEIZED; SEIZIN; SEPARATE COVENANT; TAKE AND CARRY AWAY; TRUE BILL. See further **APPOINT**; **BENEFICIAL**; *Long Eaton Recreation Grounds Co. v. Midland Railway* [1902] K.B. 574, cited **BUILDING**.

WORK. See **LABOUR**; **WAGES**.

(1) “The word ‘work’ may be used in two senses; it may mean either the labour which a man bestows upon a thing, or the thing upon which the labour is bestowed” (*per* Collins M.R., *Atkinson v. Lumb* [1903] 1 K.B. 861, cited **ENGINEERING WORK**). See further *Bromley Rural Council v. Croydon*, *Carlisle Rural Council v. Carlisle* [1909] 1 K.B. 471; *Reigate Rural Council v. Sutton Water Co.* 78 L.J.K.B. 315, both cited **COMPLETION**.

(2) It is probably impossible to define what is “work” by a child, young person or woman, within the Factory and Workshop Act 1901 (c. 22, now Factories Act 1961 (c. 34), s.87), because a thing—*e.g.* oiling machinery—though ordinarily “work,” may under some circumstances not be so considered; the nearest approach to a practical definition is, *semble*, the doing something which the doer would have to do if working under orders, and it is none the less “work” because done for self-amusement (*Prior v. Slaithwaite Co.* [1898] 1 Q.B. 881). In *Graves v. Duncan* 36 Sc. L.R. 490, a manageress of a millinery establishment who kept her own hours and could come and go as she pleased, was held to be “employed” on factory “work,” within s.94, Factory and Workshop Act 1878 (c. 16); *Walker v. Martindale* 80 J.P. 270.

(3) A roof providing access to windows may be a place where a window-cleaner “has to work” within s.26(1) of the Factories Act 1937 (c. 67), now Factories Act 1961 (c. 34), s.29(1) (*Lavender v. Diamints* [1949] 1 K.B. 585).

(4) The heating of water in a boiler room is not a “process of work” within ss.4(1) and 47(1) of the Factories Act 1937 (c. 67), now ss.4(1) and 63(1) of the 1961 Act, nor is the boiler room a “workroom” within s.4(1) (*Brophy v. J. C. Bradfield & Co.* [1955] 1 W.L.R. 1148).

(5) “Work” (Railway Rolling Stock Protection Act 1872 (c. 50), ss.2, 3) covered any establishment or place (used for the purpose of trade or manufacture) connected with a line of railway by sidings along which the rolling stock might be propelled (*Easton Estate Co. v. Western Waggon Co.* 54 L.T. 735). In this connection, it will be observed that “work” had a meaning similar to “WORKS.”

(6) “Work is being carried on” (Docks Regulations 1934 (No. 279), reg. 11(1)). The word “work” meant work on the various processes covered by Part II of the Regulations and included loading and unloading (*Mace v. Green (R. H.) and Silley Weir* [1959] 2 Q.B. 14).

(7) "Work is being carried on" (Shipbuilding Regulations 1931 (No. 133), reg. 42 (a)) means work of actual construction or repair on the ship, and does not cover the activities of a night watchman (*Opie v. Falmouth Docks and Engineering Co.* [1961] 1 Lloyd's Rep. 38).

(8) (Finance Act 1941 (c. 30), s.23) does not include the unpaid work of a housewife (*Phillips v. Emery* 62 T.L.R. 68).

(9) "Work of construction": see *Hobbs v. Bradley* 37 Sc. L.R. 532, cited **ENGINEERING WORK**.

(10) "Structure or work": see **STRUCTURE**. See further *Charing Cross & Strand Electricity Corporation v. Woodthorpe* 88 L.T. 772, cited **STRUCTURE**.

(11) "Work," within the meaning of proviso to s.3, Copyright Act 1911 (c. 46): see *Osborne v. Dent & Sons Ltd.* [1925] 1 Ch. 369.

(12) "Work . . . so altered" (s.7, Fine Arts Copyright Act 1862 (c. 68)): see *Preston v. Raphael Tuck & Sons Ltd.* 95 L.J. Ch. 382.

(13) "Work of a particular kind" (Redundancy Payments Act 1965 (c. 62), s.1(2)(b) now Employment Protection (Consolidation) Act 1978 (c. 44), s.81(2)(b)). Work on stainless steel was not "work of a particular kind" under this section in a case where those who had been engaged on it before it ceased were offered work on black metal (*Amos, Vassal and Fowler v. Max-Arc* [1973] I.R.L.R. 286). Work during particular hours was held not to be "work of a particular kind"; so that a request that an employee do the same work but at a different time did not denote a diminution in the requirements for employees to do "work of a particular kind" (*Johnson v. Nottingham Combined Police Authority; Dutton v. Same* [1974] I.C.R. 170). This case had to be "distinguished" in two subsequent cases where it was held that a request to an employee to switch from a night shift to a day shift *did* denote a diminution in the requirements for employees to do "work of a particular kind" within the meaning of this section (*Squibb v. Shepperton Studios, Industrial Tribunal*, May, 7 1974; *Kykot v. Smith Hartley* [1975] I.R.L.R. 372). See also *Lesney Product v. Nolan* [1977] I.C.R. 235. Work as an operations manager responsible to a general manager was held to be "work of a particular kind" for the purposes of this section, and when the two posts were merged the resulting job, being more complex than either of the two previous jobs and requiring different qualities, was held to be work of a different kind (*Robinson v. British Island Airways* [1978] I.C.R. 304). A man employed as a divisional contracts surveyor under a contract of employment which required him to do any and all duties, which reasonably fell within the scope of his capabilities was employed to do "work of a particular kind" within the meaning of this section, and when, through a diminution in the work he was required to do, he was dismissed, and his employer had no right to require him to do any other work, he became redundant under this section (*Cowen v. Haden* [1983] I.C.R. 1). Work on a night shift can be work of a particular kind within the meaning of s.81(2)(b) (*Macfisheries v. Findlay* [1985] I.C.R. 160).

(14) It is not necessary that there should be remuneration for an activity for it to qualify as "work" for the purposes of claims under the Supplementary Benefits Act 1976 (c. 71) (*Clear v. Smith* [1981] 1 W.L.R. 399). In the context of a prosecution for claiming sickness benefit while working it is not necessary that the work in question should be manual labour. Supervising and organising others could be "work" under the social security legislation. (Industrial Tribunal Decision No. R (s) 280).

(15) "Works or uses any plant or equipment" (Construction (General Provisions) Regs. 1961 (No. 1580), reg. 3 (1)). These words cover not only the industrial operation of a machine for its designed purpose, but also any operation of it

for any purpose which involves activating it (*Johns v. Martin Simms (Cheltenham)* [1983] 1 All E.R. 127).

“Work of repair”: see REPAIR.

“Work of charity”: see CHARITY.

Literary work: see LITERARY; PERIODICAL.

“Work of mercy”: see MERCY.

“Works of artistic craftsmanship,” see ARTISTIC.

Necessary work: see NECESSARY.

“Work of necessity”: see NECESSITY.

“Workplace” see WORK PLACE.

“Sanitary work”: see SANITARY.

“Work and maintain” a railway: see MAINTAIN.

“ ‘Manufacture’ and ‘work’ ”: see MANUFACTURE.

Stat. Def., Social Security Act 1975 (c. 14), ss.17, 56; Highways Act 1980 (c. 66), s.291(4).

“Work permit.” Stat. Def., Immigration Act 1971 (c. 77), s.33.

See FROM HIS WORK; PUBLIC WORK; WORKS; WORLDLY LABOUR; WORKING PLACE; ENGAGED; REMUNERATION; TEMPORARY.

WORK IN PROGRESS. Stat. Def., Finance (No. 2) Act 1975 (c. 45), Sched. 10, para. 17; Finance Act 1976 (c. 40), Sched. 5, para. 30.

WORKABLE. (1) “An agreement to work a mine as long as it is ‘fairly workable’ does not oblige the tenant to work it at a dead loss (*Jones v. Shears* 7 C. & P. 346); nor does a covenant to ‘get the demised clay to the fullest practicable extent consistent with the means of sale of bricks and tiles to be derived therefrom,’ although a means of sale at an unremunerative rate might be found (*per* Denman J., *Newton v. Nock* 43 L.T. 197); but an agreement to work ‘in the most proper and effective manner’ is broken by a cessation from working, although the dead rent be paid (*Kinsman v. Jackson* 42 L.T. 80, 558. The dictum of Malins V.-C., *Wheatley v. Westminster Brymbo Coal Co.* L.R. 9 Eq. 538, that it is enough if the dead rent be paid, would seem not to be law: see *per* Jessel M.R., 42 L.T. 558). ‘Coal seams workable as coal seams’ means workable at a profit, including the coal and fire clay, etc., to which the tenant is entitled (*Carr v. Benson* 3 Ch. 524)”; Woodf. (24th ed.) 612.

(2) As to construction of covenants to work mines, see further *R. v. Bedworth* 8 East, 387; *Bute v. Thompson* 14 L.J. Ex. 95; *Clifford v. Watts* L.R. 5 C.P. 577; *Jervis v. Tomkinson* 26 L.J. Ex. 41; *Foley v. Addenbrooke* 14 L.J. Ex. 169; *Quarrington v. Arthur* 11 L.J. Ex. 418; *Doe d. Bryan v. Bancks* 4 B. & Ald. 401; *Cartwright v. Forman* 7 B. & S. 243; Woodf. (24th ed.) 527, 695, 764; MacS. (5th ed.) 133, 139; WIN; WORTH THE EXPENSE. See also *Jackson’s Trustee v. Dixon* 38 Sc. L.R. 587, cited FAIRLY; PROFITABLE; *Watson v. Charlesworth* [1905] 1 K.B. 74, cited WIN.

(3) In the expression “workable hatch,” “workable” is intended to describe the state of a hatch that can still be worked because its hold is not yet full (*Compania de Navigacion Zita S.A. v. Louis Dreyfus and Comagnie* [1953] 1 W.L.R. 1399).

Cp. WROUGHT.

WORKED. (1) Vessels “rowed or worked” may be propelled by steam (*per* Littledale J., *Tisdell v. Combe* 7 A. & E. 796).

(2) So, a barge having no motive power of its own but which was towed by a

steamer, was being “worked and navigated” within s.66, Watermen’s and Lightermen’s Amendment Act 1859 (c. cxxxiii) (*Elmore v. Hunter* 3 C.P.D. 116).

(3) But attaching a steamboat to 31 barges, which had been collected about 100 yards from Victoria Dock, and so taking them altogether into the dock, was held not a “navigating” of the steamboat “on the river” within a bye-law under the Act just mentioned which prohibited any person “navigating any steamboat on the river” to tow more than six craft (*Rolles v. Newell* 25 Q.B.D. 335, followed in *Gardner v. Doe* [1906] 2 K.B. 171).

(4) By the Rules under Coal Mines Act 1854 (c. 108), s.4, an adequate ventilation was required to be “constantly” produced at all collieries, and s.11 imposed a penalty if any colliery was “worked” contrary to rules; held, that a colliery in full operation on weekdays was also being “worked” during the suspension of actual work between Saturday and Monday morning (*Knowles v. Dickinson* 29 L.J.M.C. 135).

WORKER. “Worker or maker” of goods: see **MAKER**.

(1) “Worker” (Defence (General) Regulations 1939, reg. 58A, para. 4(A)) was held to cover managing director of a company (*Trussed Concrete Steel Co. v. Green* [1946] Ch. 115).

(2) A man who occupied as tenant part of the premises of a company by whom he was supplied with materials for further processing under contracts, and who employed and paid his own employee, was not a “worker” within the meaning of s.23(1) of the Wages Councils Act 1945 (c. 17) (*Westall Richardson v. Roulson* [1954] 1 W.L.R. 905).

(3) “Worker” (Industrial Relations Act 1971 (c. 72), s.167) includes a part time collector for a football pools firm (*Broadbent v. Crisp*, *The Times*, December 3, 1973). But did not include the writer of original dramatic material for the BBC (*Writers’ Guild of Great Britain v. British Broadcasting Corporation* [1974] I.C.R. 234). The essential question was whether the contract left a party free to delegate the performance of the work or services to somebody else or whether he had to perform it himself. If a man’s obligation involved personal performance he would be a “worker” within the meaning of this section (*Broadbent v. Crisp* [1974] I.C.R. 248).

(4) “Workers to whom the issue relates” (Employment Protection Act 1975 (c. 71), s.14(1)). Workers dismissed while on strike, but who desire to return to work after the settlement of the dispute are “workers” within the meaning of this section although no longer employed by the company (*Grunwick Processing Laboratories v. Advisory Conciliation and Arbitration Service* [1978] 1 All E.R. 338).

(5) A student is not a “worker” within the meaning of art. 7(2) of Council Regulation (EEC) No. 1612/68. (*MacMahon v. Department of Education and Science* [1982] 3 W.L.R. 1129).

Stat. Def., Trade Union and Labour Relations Act 1974 (c. 52), s.30; Restrictive Trade Practices Act 1976 (c. 34), s.9(6); Wages Councils Act 1979 (c. 12), s.28. Employment Act 1982 (c. 46), s.18.

See **FEMALE WORKER**.

WORKHOUSE. “Workhouse” (Poor Law Amendment Act 1834 (c. 76), s.109) included “any house in which the poor of any parish or union shall be lodged and maintained; or any house or building purchased erected hired or used, at the expense of the poor rate by any parish vestry guardian or overseer, for the recep-

tion, employment, classification, or relief of any poor person therein at the expense of such parish”; “united workhouse” meant and included “any workhouse of a union” (*ibid.*).

Stat. Def., Lunacy Act 1890 (c. 5), s.341; Prevention of Cruelty to Children, etc., Acts 1889 (c. 44), s.17, and 1894 (c. 41), s.26; (see now Act of 1904 (c. 15), s.30). “Workhouse” and “workhouse infirmary”: see National Health Insurance Act 1924 (c. 38), s.116.

WORKING. (1) As regards working minerals “there is no case which defines what ‘working’ is” (*per* counsel in *Bishop Auckland Co-operative Society v. Butterknowle Colliery Co.* 73 L.J. Ch. 637). But see definition in Mines (Facilities and Support) Act 1923 (c. 20), s.1.

(2) Building “used exclusively for the working of” a mine: see *Tylecote v. Morton* 85 L.T. 692.

(3) “Working on a co-partnership system”; “working on the premium bonus system”; see *Ashley v. General Union of Operative Carpenters and Joiners* [1922] 2 A.C. 440.

(4) A circular saw operator who used it after working hours to help another workman on a private job was not “working” on the premises within the meaning of s.14(1) of the Factories Act 1937 (c. 67), now s.14(1) of the Factories Act 1961 (c. 34) (*Napieralski v. Curtis* [1959] 1 W.L.R. 835).

(5) “Working” (Threshing Machines Act 1878 (c. 12), s.1). A machine was “working” within the meaning of this section as long as motive force was supplied to it, even though for a short period it was not in fact threshing (*Jones v. Richards* [1955] 1 W.L.R. 444).

(6) “Working” (Contracts of Employment Act 1963 (c. 49), Sched. 2, para. 2 (4); now Contracts of Employment Act 1972 (c. 53), Sched. 2, para. 2(4), now Employment Protection (Consolidation) Act 1978 (c. 44), Sched. 3, para. 3(2)). Employees not on the employer’s premises, but who were receiving full back pay at an agreed rate, were not “working” within the meaning of this paragraph (*Adams v. Wright (John) & Sons (Blackwall)* [1972] I.C.R. 463).

(7) “Working” (Construction (Working Places) Regulations 1966 (No. 94), reg. 6(2)). It was held that, where a workman was moving along the top of a wall with a pneumatic hammer in his possession and he fell from the wall, he had not been “working” there at the time of the accident within the meaning of this regulation (*Brady v. Dundee District Council*, 1980 S.L.T. (Notes) 60).

In the course of “working any railway”: see **IN THE COURSE**.

Working for hire: see **EMPLOYMENT**.

Stat. Def., Mines and Quarries Act 1954 (c. 70), s.182(3).

See **ENGAGED IN WORKING**; **LIBERTY OF WORKING**.

WORKING CLASSES. (1) The phrase “working classes” in Housing Act 1936 (c. 51), ss.73, 85, 97, was held inappropriate to modern social conditions: see *H. E. Green & Sons v. Minister of Health* [1948] 1 K.B. 34; *Belcher v. Reading Corporation* [1950] Ch. 380. It did not include a police superintendent (*Rodwell v. Minister of Health* [1947] K.B. 404). In applying the test whether a house was provided for the working classes the only method was to ask whether the house was provided for people in the lower income range, or, in other words, for people whose circumstances were such that they were deserving of support (*Guinness Trust (London Fund) v. Green* [1955] 1 W.L.R. 872).

(2) There was no inference that a gift to provide dwellings for the “working

classes" was for the relief of poverty and it therefore failed (*Re Sanders' Will Trusts* [1954] Ch. 265).

See INHABITED; LETTING.

See further COTTAGE; INHABITED; LETTING; *Re Sutton* [1901] 2 Ch. 640, cited POOR; *Walker v. Hobbs* 23 Q.B.D. 458, cited CONDITION.

Stat. Def., Housing Act 1936 (c. 51), Sched. XI, para. 11(e); Public Health (London) Act 1936 (c. 50), s.304(1).

WORKING DAYS. (1) " 'Working days' in a charterparty will vary in different ports. If by the custom of the port certain days in the year are holidays, so that no work is done in that port on those days, then 'working days' do not include those holidays. 'Working days,' in an English charterparty, if there is nothing to show a contrary intention, do not include Christmas Day, and some other days which are well known to be holidays. Therefore 'working days' mean days on which, at the port according to the custom of the port, work is done in loading and unloading ships, and the phrase does not include Sundays" (*per Esher, M.R., Nielsen v. Wait* 16 Q.B.D. 71). See hereon *Straker v. Kidd* 3 Q.B.D. 223. See *British & Mexican Shipping Co. v. Lockett* [1911] 1 K.B. 264.

(2) "Working days," unqualified by some such phrase as "weather permitting" or "weather working day," are not made non-working days by bad weather (*Tiis v. Byers* 1 Q.B.D. 244, cited DEMURRAGE; but see *Harper v. McCarthy* 2 B. & P.N.R. 258, cited DAY).

(3) Charterers "to be allowed 350 tons *per* working day of 24 hours for loading and discharging" means that the charterers are to have 24 working hours to load or discharge each 350 tons (affirmed, nom. *Forest S.S. Co. v. Iberian Co.* 81 L.T. 563); the phrase means "that 24 hours in which work is usually done at the port of loading or discharging, as the case may be, are to elapse before a day can be reckoned against the charterers" (*per Bigham J., ibid.*).

(4) But where the words were, "cargo to be shipped at the rate of 500 tons *per* working day of 24 'consecutive' hours (weather permitting), Sundays and holidays always excepted"; held, that that did not mean 24 working hours, but meant that (excepting Sundays and holidays) each period of 24 consecutive hours (including night and non-working hours) elapsing after loading or discharging began must be reckoned as a working day—"consecutive hours" meaning hours following one another immediately and without interval of time (*Turnbull v. Cruickshank* 42 Sc. L.R. 207, distinguishing *Forest S.S. Co. v. Iberian Co.* sup.). See further *Watson v. Mysore Manganese Co.* 54 S.J. 234.

(5) As to the number of hours to be calculated for a "working day," as regards demurrage, see further *Mein v. Ottmann* 41 Sc. L.R. 144.

(6) A "weather working day" in a demurrage clause in a charterparty is computed according to the number of hours worked at standard, as opposed to overtime, rates of pay (*N.V. Maatschaappij Zeevort v. M. Friesacher Soehre* [1962] 1 W.L.R. 535).

(7) "Working day" is a length of time consisting of the number of hours usually worked at the port in question (*Alvion Steamship Corporation v. Galban Lobo Trading Co.* [1955] 1 Q.B. 430), and in relation to lay days is a day of 24 hours which is a day of work at that port as opposed to a day of rest: it matters not that work on that day has to be paid for at overtime rates (*Reardon Smith Line v. Min. of Agriculture, Fisheries and Food* [1963] A.C. 691).

(8) "Working day" (Transport Act 1968 (c. 73), s.96(3)). Hours spent driving

overseas are not part of a driver's "working day" for the purposes of this section (*Fox v. Lawson* [1973] 1 Q.B. 757).

Stat. Def., Notice of Accidents Act 1894 (c. 28), s.1; Transport Act 1968 (c. 73), s.103; Consumer Credit Act 1974 (c. 39), s.189; Employment Protection (Consolidation) Act 1978 (c. 44), s.110(9).

See COLLIERY WORKING DAY; DAYS; DEMURRAGE; LAY DAYS; RUNNING DAYS; WEATHER WORKING DAY.

WORKING EXPENSES. (1) "Working expenses of the railway and other proper outgoings" (s.4, Railway Companies Act 1867 (c. 127)): see *Re Eastern & Midlands Railway* 45 Ch. D. 367; *Proffitt v. Wye Valley Railway* 64 L.T. 669; *Re Wrexham etc. Railway* [1900] 1 Ch. 261; [1900] 2 Ch. 436. The expenses of promoting a bill to substitute electricity for steam power were not "working expenses," or "other proper outgoings" within the section (*Re Mersey Railway* 64 L.J. Ch. 623). See further, as regards "working expenses" in the section, *Re Manchester & Milford Railway* 66 L.J. Ch. 141.

(2) "Working expenses" (Racecourse Betting Act 1928 (c. 41), s.3) . . . covered the expenses incurred reasonably and properly, in the "working" (*i.e.*, the setting up, keeping and operating) of totalisators on approved racecourses; but they were not limited to such expenditure only as was wholly and exclusively laid out for the purposes of the board's business (*Racecourse Betting Control Board v. Young* [1958] 1 W.L.R. 705; subsequently affirmed [1959] 1 W.L.R. 813, H.C.).

See EXPENSES.

WORKING HOLIDAY. For the purposes of a charterparty a working holiday is a holiday on which loading may be performed without substantial extra payment to the men engaged in loading the ship (*Panagos Lyras S.S. (Owners) v. Joint Danube & Black Sea Shipping Agencies of Braila* 47 T.L.R. 403).

WORKING HOURS. (1) Time in which an employee was required to "stand by" in case of emergency was held not to fall within his "working hours of duty" for the purposes of a contract of employment (*Farmer v. London County Council* [1943] K.B. 522).

(2) "Working hours" (Employment Protection Act 1975 (c. 71), s.53(2)(b); Sched. 16, Pt. III, para. 11, amending Trade Union and Labour Relations Act 1974 (c. 52), Sched. 1, para. 6 (4)). Lunch and tea breaks are not part of an employee's "working hours" within the meaning of this legislation, even though the employee is required to remain on the premises during those breaks (*Zucker v. Astrid Jewels* [1978] I.C.R. 1088).

Staf. Def., Shops Act 1950 (14 Geo. 6, c. 28), s.74; Industrial Relations Act 1971 (c. 72), s.5(5); Employment Protection Act 1975 (c. 71), s.53; Employment Protection (Consolidation) Act 1978 (c. 44), ss.23, 58, as substituted by s.3 of the Employment Act 1982 (c. 46); Trade Union Act 1984 (c. 49), ss.9, 11, 13.

WORKING LIFE. Stat. Def., Social Security Act 1975 (c. 14), s.27(2).

WORKING MEN'S HOSTEL. See HOSTEL.

WORKING PLACE. (1) As regards the efficient lighting of working places under the Building Regulations 1926 (No. 738), reg. 15, a night watchman's tour of duty was not a "working-place" (*Field v. Perry's (Ealing)* [1950] 2 All E.R. 521).

(2) A cab proprietor's yard to which cab drivers go as hirers of cabs was a "work-place" within s.38, Public Health (London) Act 1891 (c. 76) (*Bennett v. Harding* [1900] 2 Q.B. 397).

(3) A road is not a working-place within s.49 of the Coal Mines Act 1911 (c. 50) and s.48(1) of the Mines and Quarries Act 1954 (c. 70) merely because men are repairing it (*Wraith v. National Coal Board* [1954] 1 W.L.R. 264). A party engaged in enlarging and constructing the working roadhead to the coal face, after shots had been fired to rip down the roof, were working in a "working place" within the meaning of these sections (*Walsh v. National Coal Board* [1956] 1 Q.B. 511). Such a "working place" includes any place where a man works, or is sent to work, or is expected to go, and it does not *ipso facto* cease to be a working place because an element of danger arises (*Venn v. National Coal Board* [1967] 2 Q.B. 557). But an area where no miner should be working, and where the mine manager could not have expected anyone to be working was held not to be a "working place" within the meaning of s.48(1) of the 1954 Act (*Hammond v. National Coal Board* [1984] 1 W.L.R. 1218).

(4) A floor temporarily used as a roof was a working-place within reg. 24(1) of the Building (Safety, Health and Welfare) Regulations 1948 (No. 1145) (*George Ball & Sons v. Sill* (1954), 52 L.G.R. 508). Such working place must be similar to a working-platform and should have the same characteristics. A man painting a roof without a platform has no working-place within the regulation (*Gill v. Donald Humberstone & Co.* [1963] 1 W.L.R. 929. To fall within this regulation a place had to be a place where a man was going to work for an appreciable time, a comparatively small area, and level; for example a new flat concrete roof (*Kelly v. Pierhead* [1967] 1 W.L.R. 65). But a duckboard lying flat on the lower half of a barrel-shaped roof was held not to be a "working place" within this regulation (*Regan v. G. & F. Asphalt* (1967) 65 L.G.R. 464).

(5) Gangways between holes in the floors of a building being demolished were "working places" within the meaning of reg. 28 (1) of the Construction (Working Places) Regulations 1966 (No. 94) (*Boyton v. Willment Brothers* [1971] 1 W.L.R. 1625). Where, after the removal of scaffolding, a workman was instructed to remove some scaffold boards from a flat roof, and in doing so fell and was injured, it was held that as the 10 to 15 minutes required to do the job was an appreciable time, the roof was a "working place" within the meaning of these regulations (*Ferguson v. John Dawson and Partners* [1976] 1 W.L.R. 1213).

WORKING PLATFORM. (1) (Building (Safety, Health, and Welfare) Regulations 1948 (No. 1145), reg. 22) does not include a fixed platform which is part of a plant being erected (*Hutchison v. Cocksedge & Co.* [1952] 1 All E.R. 696; *Curran v. Neill (William) & Son* [1961] 1 W.L.R. 1069).

(2) Beams laid to receive the neolith involved in the construction of the second floor of a dwelling-house under construction were not a "working platform" within the meaning of reg. 24(1) of the Construction (Working Places) Regulations 1966 (No. 94) (*Buist v. Dundee Corporation* 1971 S.L.T. 76).

WORKING PROPRIETORS. (Finance (No. 2) Act 1939 (c. 48), s.13(2); Finance 1940 (c. 30), s.31(1).) See *Inland Revenue Commissioners v. Stirling* 1943 S.C. 476, *Inland Revenue Commissioners v. Frank Stone (Kidderminster)* [1942] 3 T.R. 19.

WORKING SHAFT. A "working shaft" (s.23(10), Metalliferous Mines Regulation Act 1872 (c. 77)) was one which was being used and in which men were working for

the purposes of a MINE, whether such purposes were for getting ore or not (*Foster v. North Hendre Co.* [1891] 1 Q.B. 71).

WORKING WEEK. Stat. Def., Transport Act 1968 (c. 73), s.103.

WORKLESS DAY; WORKLESS PERIOD. “Workless day” (Employment Protection Act 1975 (c. 71), s.22, now Employment Protection (Consolidation) Act 1978 (c. 44), s.12). Where a contract providing for a four-day week was amended to provide for a two-day week and was accepted, though under protest, the two non-working days did not become “workless days” within the meaning of this section (*Clemens v. Richards (Peter) T/A Bryan (John)* [1977] I.R.L.R. 332).

Stat. Def., Employment Protection Act 1975 (c. 71), s.22; Employment Protection (Consolidation) Act 1978 (c. 44), s.12.

WORKMAN. (1) “Workman” (Employers and Workmen Act 1875 (c. 90), s.10; Employers’ Liability Act 1880 (c. 42), s.8). A driver of a wharfinger’s cart whose duty is to load and unload goods, was such a “workman” (*Yarmouth v. France* 19 Q.B.D. 647), so, generally, of a stevedore (*per* Brett M.R., *Morgan v. London General Omnibus Co.* 13 Q.B.D. 832, *inf.*); see further *Maynard v. Robinson* 89 L.T. 136, cited MANUAL LABOUR; but neither an omnibus conductor nor a driver of a tramcar was such a “workman,” for the duties of neither involved labour, and those of a conductor, at least, could not be regarded as manual (*Morgan v. London General Omnibus Co.* 13 Q.B.D. 832, dissenting from *Wilson v. Glasgow Tramways Co.* 5 Sess. Ca. (4th Ser.) 981; *Cook v. North Metropolitan Trams Co.* 18 Q.B.D. 683). See further LABOUR.

(2) Nor was a designer of patterns (*Jackson v. Hill* 13 Q.B.D. 618), nor a grocer’s assistant (*Bound v. Lawrence* [1892] 1 Q.B. 226), such a “workman.” Nor was a potman at a public house such a “workman,” if his position was that of a “domestic or menial servant” (*Pearce v. Lansdowne* 62 L.J.Q.B. 441, applied in *Re Junior Carlton Club* [1922] 1 K.B. 166, cited DOMESTIC SERVANT). So, a hairdresser was not a “workman” within the Sunday Observance Act 1677 (c. 7) (*Palmer v. Snow* [1900] 1 Q.B. 725, cited TRADE), nor was he within Employers and Workmen Act 1875 (c. 90) (*R. v. Louth Justices* [1900] 2 I.R. 714).

(3) But one who had to labour manually was not less a “workman” because he had to employ other manual labour to assist him (*Grainger v. Aynsley* 6 Q.B.D. 182, but see *Vamplew v. Parkgate Iron Co.* [1903] 1 K.B. 851); and in like manner one, a substantial part of whose time was taken up in manual labour, was a “workman” within the Acts mentioned, although he was an overlooker of others (*Leech v. Gartside* 1 T.L.R. 391; *secus*, if he only occasionally laboured, *Dennis v. Forbes* 41 S.J. 144); and so a miner working under a “butty” man was a “workman” (*Brown v. Butterley Co.* 53 L.T. 964).

(4) As to what was an employment of a workman under the above-mentioned Acts, see *Wild v. Waygood* [1892] 1 Q.B. 783; EMPLOYER.

(5) “Workman” (Workmen’s Compensation Act 1897 (c. 37), s.7(2)): see thereon *Simpson v. Ebbw Vale Co.* [1905] 1 K.B. 453; *Dunlop v. M’Cready* 37 Sc. L.R. 779, *M’Gregor v. Dansken* 36 Sc. L.R. 393, *Hayden v. Dick* 40 Sc. L.R. 95, and *Paterson v. Lockhart* 42 Sc. L.R. 755, all cited OTHERWISE; *Vamplew v. Parkgate Iron Co.* *sup.*; *Simmons v. Faulds* 17 T.L.R. 352; *Evans v. Penwyllt Dinas Silica Brick Co.* 18 *ibid.* 58; *Bagnall v. Levinstein* 23 *ibid.* 165; *Ellis v. Ellis & Co.*

[1905] 1 K.B. 324, cited *EMPLOYER*. As to the exercise of his option by an infant workman, see *Stephens v. Dudbridge Co.* [1904] 2 K.B. 225, and *Neale v. Electric Accessories Co.* [1906] 2 K.B. 558, cited *OPTION*.

(6) “Workman” (Workmen’s Compensation Act 1906 (c. 58), s.13). See on this section, *Walker v. Crystal Palace Football Club* [1910] 1 K.B. 87, cited *OTHERWISE*; *Hill v. Begg* [1908] 2 K.B. 802; *Dewhurst v. Mather* [1908] 2 K.B. 754; *Marks v. Carne* [1909] 2 K.B. 516; *Doggett v. Waterloo Taxicab Co. Ltd.* [1910] 2 K.B. 336; *Knight v. Bucknill* [1913] W.C. & Ins. Rep. 175; *Smith v. Horlock* [1913] W.C. & Ins. Rep. 441; *Smith v. Buxton* 84 L.J.K.B. 697; *Roper v. Hussey Freke* [1915] 2 K.B. 222; *Smith v. General Motor Cab Co. Ltd.* [1911] A.C. 188; *Beck v. Hill* [1915] W.C. & Ins. Rep. 319; *Williams v. S.S. Maritime (Owners)* [1915] 2 K.B. 137; *Boothby v. Patrick & Son* 88 L.J.K.B. 190; *Bray v. Kirkpatrick & Sons* [1919] W.C. & Ins. Rep. 151; *Stoker v. Wortham* [1919] 1 K.B. 499, cited *CASUAL*; *Manton v. Cantwell* [1920] A.C. 781; *Binding v. Great Yarmouth Port and Haven Commissioners* 92 L.J.K.B. 377; *Wood v. Wood* 93 L.J.K.B. 538.

(7) As to the test to apply in considering whether a person was employed otherwise than by way of manual labour for the purposes of the Workmen’s Compensation Acts, see *Jacques v. Steam Tug Alexandra* [1921] 2 A.C. 339.

(8) On the question of whether a person’s wages were to be taken as exceeding £250 a year or not for the purposes of these Acts, where the amount earned was at varying rates during the employment, see *Griffith v. Penrhyn Castle (Owners)* [1917] 1 K.B. 474; *Re Dairymen’s Foremen and Re Tailor’s Cutters* 107 L.T. 342. In *Reid v. British & Irish Steam Packet Co. Ltd.* [1921] 2 K.B. 319, it was held that a foreman whose substantial work was supervision and not manual labour, and whose wages exceeded £250 per annum, was not a “workman” within s.13. See further *Thomson & Co. v. Mackay* 90 L.J.K.B. 1337.

(9) Where an agreement was entered into between an employer and a servant under the Workmen’s Compensation Act 1906 (c. 58), with regard to the payment of the latter of compensation, in which the servant was agreed to be a workman within the meaning of the Act, a county court judge could not refuse to record the agreement on the ground that the servant was not a workman within the meaning of the Act: see *Goodsell v. Owners of Sailing Barge Lloyds* [1914] 3 K.B. 1001.

(10) “Workman” (Workmen’s Compensation Act 1925 (c. 84), s.3). See hereon *Watson v. Birmingham Government Instructional Centre* 44 T.L.R. 576; *Skidmore v. Bullock, Lade & Co. Ltd.* 44 T.L.R. 575. A jobbing glazier was held to be an independent contractor, and not within the definition of a workman (*Williams v. Larsen Ltd.* [1928] W.C. & Ins. Rep. 379). A workman who had retired upon a pension under his employer’s superannuation scheme was still a workman within the Workmen’s Compensation Acts: see *Stevens v. Birmingham Corporation* [1929] W.C. & Ins. Rep. 375; knife grinder not a workman, *Templeton v. Parkin* 140 L.T. 519.

(11) A commercial traveller or sales representative paid by commission was not a “workman” entitled to obtain workmen’s compensation (*Petrie v. Red Bank Manufacturers Co.* 28 B.W.C.C. 423). See also *CONTRACT OF SERVICE*.

(12) “Workman” (Truck Act 1887 (c. 46), s.2), see *Squire v. Midland Lace Co.* [1905] 2 K.B. 488, cited *ARTIFICER*.

(13) *Semble*, that post office letter sorters and postmen were “workmen” within s.3(1)(b), Cheap Trains Act 1883 (c. 34) (*Re Fawcett Association and London, Brighton & South Coast Railway* 10 Ry. & Can. Traffic Ca. 299).

(14) A statutory body set up to provide shipping facilities was not engaged in “trade or industry” within Trades Disputes Act 1906 (c. 47), ss.2, 5, and therefore

its employees were not “workmen” within the meaning of the Act (*British and Irish Steam-Packet Co. v. Branigan* 1956, 90 I.L.T. 98).

(15) “Workman employed in agriculture” (s.4(1), Corn Production Act 1917 (c. 46), did not include a person employed in gardens unless such gardens fell within the definition of a market garden in s.48, Agricultural Holdings Act 1908 (c. 28): see *Bickersdike v. Lucy* [1920] 1 K.B. 707. Nor did it include women employed part time daily milking cows, and therefore they were not within the provisions of the Act as to minimum wages: see *Hampton v. Winward* [1921] 2 K.B. 669.

(16) “Workman or labourer” (Companies Act 1929 (c. 23), s.264(1)(b)(c); Companies Act 1985 (c. 6), Sched. 19, para. 9). See *Re London Casino Co. Ltd.* 167 L.T. 66, cited CLERK.

(17) As regards secure fencing under s.14(1) of the Factories Act 1937 (c. 67), now s.14(1) of the Factories Act 1961 (c. 34), “workman” means not only the actual operator but also any other person employed on the premises (*John Summers & Sons v. Frost* [1955] A.C. 740.)

(18) “Workman” (Building (Safety, Health and Welfare) Regulations 1948 (No. 1145), regs. 4, 31 (1)) does not include an independent contractor, who cannot claim the benefit of the regulations, to which the definition of “workman” in Employers and Workmen Act 1875 (c. 90), s.10 does not apply (*Herbert v. Harold Shaw* [1959] 2 Q.B. 138).

(19) (Industrial Disputes Order 1951 (No. 1376), Art.12(1)). A town clerk is a “workman” (*R. v. International Arbitration Tribunal, Ex p. South Shields Corporation* [1952] 1 K.B. 46).

Stat. Def., Employers and Workmen Act 1875 (c. 90), s.10; Employers’ Liability Act 1880 (c. 42), s.8; Workmen’s Compensation Acts 1897 (c. 37), 1906 (c. 58), 1925 (c. 84); Truck Act 1887 (c. 46), s.2; Mines and Quarries Act 1954 (c. 70), s.185.

See ARTIFICER; EARNINGS; IN OR ABOUT; LABOURER; PERSONAL LABOURER; SERVANT; SUCH EXAMINATION; SUCH; UNDER.

WORKMANLIKE. See PROPER AND WORKMANLIKE.

WORKMEN. See TRADE DISPUTE.

WORKMEN’S COMPENSATION ACTS. Stat. Def., National Health Insurance Act 1936 (c. 32), s.226(1).

WORKMEN’S TRAINS. Workmen’s trains as provided for by the Cheap Trains Act 1883 (c. 34) (see s.3), were trains which railway companies had to provide at a low third class rate between the hours of 6 p.m. and 8 a.m., for the reasonable accommodation of working people; and a train was not less a “workman’s train” because the railway company chose, for their own convenience, to run first and second class carriages with it (*Re Metropolitan Railway 8 Ry. & Can. Traffic Ca. 32*, cited REASONABLE).

See hereon WORKING CLASSES; WORKING MEN’S DWELLINGS; WORKMAN.

WORKPEOPLE. Self-employed operatives used by a building contractor are not “workpeople” within the meaning of clause 31 of the J.C.T. Contract (*J. Murphy & Sons v. Southwark London Borough Council* (1983) 81 L.G.R. 383).

WORKS. (1) Pit-pans and levels, held to be “works,” within a licence to get china-clay (*Martin v. Williams* 26 L.J. Ex 117); but tram-plates fastened to sleepers, not let into but resting on the ground, are not “works” within a mining lease (*Beaufort v. Bates* 31 L.J. Ch. 481; but see *Mansfield v. Blackburne* 10 L.J.C.P. 178).

(2) A canal company was authorised by statute to supply water for condensing or raising steam to mills or works within 100 yards of the canal. “Works” was held not to include troughs, pipes, and other installations, within 100 yards of the canal, belonging to a railway company (*A.-G. v. Rochdale Canal Co.* 55 T.L.R. 754).

(3) There were “works” within s.1(1), Employers’ Liability Act 1880 (c. 42), wherever the employer was doing work, though it was but temporary, *e.g.* pulling down a wall (*Brannigan v. Robinson* [1892] 1 Q.B. 344); but works contracted for were not those of the contractee until he took them over (*Howe v. Finch* 17 Q.B.D. 187); included the building site of a half-built house (*Hunt v. Rice & Son* [1937] 1 All E.R. 576). See DEFECT; WAYS.

(4) The completion of “works” under s.133, Lands Clauses Consolidation Act 1845 (c. 18), includes—*e.g.* in the case of land speculatively taken by a local authority for street improvement—the disposal, by sale or otherwise, of all the land so acquired; and, therefore, until the completion of the street and the disposal of all the land, the local authority is liable, under the section, to make good any deficiency of land tax and poor rate in respect of the lands taken (*Bristol Guardians v. Bristol Corporation* 18 Q.B.D. 549); and such deficiency (whether payable by a local authority or a company) is not to be calculated on the basis of the promoters making good any loss, for if the property were unoccupied there would be no deficiency to be made good; the section provides the basis of calculation, *viz.* “the rental at which such lands, with any buildings thereon, were valued or rated at the time of the passing of the special Act” (*Putney v. London & South Western Railway* [1891] 1 Q.B. 182, 440; *St. Leonard, Shoreditch v. London County Council* [1895] 2 Q.B. 104). But the deficiency to be made good is of land tax or poor rate, and if the borough rates and the poor rate are thrown together into a general rate—*e.g.* under s.10, London Government Act 1899 (c. 14)—the deficiency to be made good under s.133, Lands Clauses Consolidation Act 1845 (c. 18), will be only “that part of the general rate which still represents the poor rate or represents anything chargeable on the poor rate” (*per* Wright J., *Islington v. London School Board* [1902] 2 K.B. 701, affirmed [1903] 2 K.B. 354); the provision in s.10(2), London Government Act 1899 (c. 14), that the general rate is to be “assessed, made, collected and levied as if it were the poor rate,” is not sufficient to bring the whole of the general rate into the “poor’s rate” to be made good under s.133, Lands Clauses Consolidation Act 1845 (*ibid.*); *secus*, probably, where the provision is that expenses not usually borne by the poor rate “are to be treated as ‘part’ of the outgoings of the poor rate” (*per* Wright J., *ibid.*, citing *Farmer v. London & North Western Railway* 20 Q.B.D. 788). See Rating and Valuation Act 1925 (c. 90), s.2; Local Government Act 1929 (c. 17), s.68.

(5) “Works,” in a guarantee, construed as works already ordered (*Plastic Co. v. Massey-Mainwaring* 11 T.L.R. 205).

(6) “Works and buildings” in a Rating Act: see *R. v. Midland Railway* 3 W.R. 415.

(7) “Works for the erection . . . of a building” (Town and Country Planning Act 1947 (c. 51), s.78(1)) included all the works necessary to carry out the erection of the building, *e.g.* demolition necessary before building could be commenced (*London County Council v. Marks & Spencer Ltd.* [1953] 2 W.L.R. 932).

(8) “Works on land” (Town and Country Planning Act 1947 (sup.), s.75(1))

included a model village (*Buckinghamshire County Council v. Callingham* [1952] 2 Q.B. 515).

(9) "Works of precaution" (War Damage Act 1943 (c. 21), s.6(2): see *Re St. Luke's Hospital, Chelsea* [1949] Ch. 459, cited TEMPORARILY.

(10) "Works of artistic craftsmanship" (Copyright Act 1956 (c. 74), s.3(1)(c)). A suite of furniture cannot be a "work of artistic craftsmanship" for the purposes of this section (*Hensher (G.) v. Restawile* [1973] 3 W.L.R. 453).

(11) The object of a charitable society to "publish works" about Egypt refers to publication of the results of the excavations which it is the society's object to carry out (*Re British School of Egyptian Archaeology, Murray v. Public Trustee* [1954] 1 W.L.R. 546.)

(12) "Completion of works": see *Stock v. Meakin* [1899] 2 Ch. 496, cited OUTGOING.

Accommodation works: see ACCOMMODATION.

"Board of works": see BOARD.

Works of maintenance: see MAINTAIN.

Works necessary: see NECESSARY; SUPPLY.

"Works of engineering construction." see ENGINEERING.

"Permanent works": see PERMANENT.

"Proper works": see CONVENIENCE.

Works "for sewage purposes": see SEWAGE.

Stat. Def., Iron and Steel Act 1975 (c. 64), s.37; Aircraft and Shipbuilding Industries Act 1977 (c. 3), s.56; Ancient Monuments and Archaeological Areas Act 1979 (c. 46), s.61; Iron and Steel Act 1982 (c. 25), s.37; Industrial Development Act 1982 (c. 52), s.6.

See CONNECTED WITH; IMMEDIATELY CONNECTED; STREET WORKS; SUBSTANTIALLY; WATERWORKS; WORK; NON-TEXTILE FACTORIES.

WORKS TRUCK. A vehicle which has to be driven for more than 1000 yards on a public highway, in passing from one part of private premises to another, cannot be a "works truck" within the meaning of the Motor Vehicles (Construction and Use) Regulations 1969 (No. 321), reg. 3(1), now Motor Vehicles (Construction and Use) Regulations 1973 (No. 24), reg. 3(1) (*Hayes v. Kingsworthy Foundry* [1971] R.T.R. 286).

WORKSHOP. (1) A room in which children were taught, and were engaged in, straw-plaiting, by and under the superintendence of a person who had no interest in the work done or the proceeds of it; held, a "workshop" within s.4, Workshop Regulation Act 1867 (c. 146) (*Beadon v. Parrott* L.R. 6 Q.B. 718).

(2) "Workshop" (Factory and Workshop Act 1901 (c. 22), ss.29(1), 149, 157). See *Nash v. Hollinshead* [1901] 1 K.B. 700; *Curtis v. Skinner* 95 L.T. 31; *Hoare v. Green* [1907] 2 K.B. 315; *Fullers v. Squire* [1901] 2 K.B. 209; *Lewis v. Gilbertson* 91 L.T. 377.

(3) A building planned and adapted for a laundry is a "workshop," within a restrictive covenant (*Meredith v. Wilson* 69 L.T. 336).

(4) "Workshop" (Rating and Valuation (Appointment) Act 1928 (c. 44), s.3(1)(d)). Premises used for the maturing of whisky in butts or barrels were occupied as a "workshop", as it required constant checking and attention during maturation (*Bell (Arthur) & Sons v. Fife Assessor* 1968 S.L.T. 185).

"Dwelling-house, workshop, or other building": see BUILDING.

Stat. Def., Factory and Workshop Act 1901 (c. 22), s.149; Shops Act 1934 (Geo. 5, c. 42), s.15(1).

See **LIGHT**; **FACTORY**.

WORLD. (1) To say of a person that he holds himself out “to the world” in any capacity, “is a loose expression” (*per* Parke, B., *Dickeson v. Valpy* 10 B. & C. 140). See **HOLD OUT**.

(2) A company whose business is to be carried on “in any part of the world” has no defined locality (*Marshall v. Orpen* [1895] A.C. 606, cited **CARRY ON**).

(3) A world-wide restraint of trade was held valid in *Nordenfelt v. Maxim Nordenfelt Guns & Ammunition Co.* [1894] A.C. 535.

WORLDLY ESTATE. When a man speaks of his “worldly estate,” that, probably, means all his property, so that the phrase is synonymous with substance (*Muddle v. Fry* 6 Mad. 270; *Gall v. Esdaile* 1 L.J.C.P. 95; *Doe v. Gwillim* 2 L.J.K.B. 194; *Lloyd v. Jackson* L.R. 1 Q.B. 571; 2 *ibid.* 269). Cp. **WORLDLY GOODS**; **WORLDLY PROPERTY**.

See **TEMPORAL**.

WORLDLY GOODS; WORLDLY SUBSTANCE. “The phrase ‘worldly goods’ is properly applicable only to personal estate” (2 Jarm. (8th ed.) 995); but “‘worldly substance’ includes every property a man has” (*per* Mansfield C.J., *Hogan v. Jackson* 1 Cowp. 307). Even “worldly goods” may be controlled by a context to include realty (*Wright v. Shelton* 18 Jur. 445, cited 2 Jarm. (8th ed.) 995). See also *Re Troup Estate* [1945] 1 W.W.R. 364. Cp. **WORLDLY ESTATE**.

WORLDLY LABOUR. “Worldly labour, business, or work,” Sunday Observance Act 1677 (29 Car. 2, c. 7): “The expression ‘any worldly labour’ cannot be confined to a man’s ordinary calling; but applies to any business he may carry on, whether in his ordinary calling or not” (*per* Park J., *Smith v. Sparrow* 4 Bing. 89). See **ORDINARY CALLING**. But the Act only related to an artificer, labourer, or workman, or to a tradesman.

WORN OUT. See **SICK**.

WORRY. “Worrying livestock means . . . chasing livestock” (Dogs (Protection of Livestock) Act 1953 (c. 28), s.1(2)(b)). A dog which runs through a field of sheep, scaring them and putting them to flight in such a way as to cause them injury or suffering is “worrying livestock” (*Stephen v. Milne* 1960 S.L.T. 276). See also *Hanlin v. O’Sullivan* [1955] L.M.D. 964.

WORSENING. “Worsening of his position” (Transport Act 1968 (c. 73), s.135(1); British Transport (Compensation to Employees Regulations 1970 (No. 187), reg. 13 (1)). In a case where employees were transferred to a subsidiary company it was held that the test of a “worsening” of position was not a comparison of the employee’s position after transfer with what it would have been if he had remained with the original company. The comparison for “worsening,” had to be judged between the past and present position of the men within the subsidiary company only (*Tuck v. National Freight Corp.* [1979] 1 W.L.R. 37).

WORSHIP. The meaning of the word “worship” in our Anglican Marriage Service—“with my body I thee worship”—is “honour.” The Puritans always objected

to the word; and in 1661 it was agreed that “honour” should be substituted, the alteration being made by Sancroft in Bishop Cosin’s revised Prayer Book, instead of the change suggested by Cosin himself. But, either by accident or through a change of mind on the part of the revision committee, the old word was allowed to remain. The more exclusive use of this word in connection with Divine Service is of comparatively modern date. In the *Liber Festivalis*, printed by Caxton in 1483, an Easter homily calls every gentleman’s house “a place of worship,” and in the same century a prayer begins, “God that commandest to worship fadir and modir.” This secular use of it is still continued in the title “your Worship,” by which magistrates are addressed, and in the appellation “worshipful companies.” The expression “with my body I thee worship,” or “honour,” is equivalent to a bestowal of the man’s own self upon the woman, in the same manner in which she is delivered to him by the Church from the hands of her father (*Blunt’s Annotated Book of Common Prayer* (6th ed.), 269; see also, for a collection of authorities on “worship,” *Mant’s Book of Common Prayer* 492, 493).

Place of worship: see PLACE; PUBLIC RELIGIOUS WORSHIP; PUBLIC WORSHIP; USUAL PLACE OF RELIGIOUS WORSHIP.

See DIVINE SERVICE; RELIGIOUS.

WORSLEY’S (LORD) ACT. Inclosure Act 1836 (6 & 7 Will. 4, c. 115).

WORTH. (1) A testamentary gift of “all I am worth,” includes the realty (*Huxtep v. Brooman* 1 Bro. C.C. 437; see thereon 1 Jarm. (8th ed.) 987, 989. See also ALL).

(2) An agreement for so many pounds “worth” of shares in a company does not mean shares to that nominal amount, but means the number of shares which, at their market value, would be purchased by the sum named (*McIlquham v. Taylor* [1895] 1 Ch. 53). See further SHARE.

(3) “Worth and value,” how arrived at: see *R. v. Hull Dock Co.* 3 B. & C. 516.

(4) “Not worth £25” (R.S.C., old Ord. 16, r. 22): see *Kydd v. Liverpool Watch Committee* 72 J.P. 113.

See EY.

WORTHY CAUSES. It was held that a residuary gift in a will to “such worthy causes as have been communicated by me to my trustees” did not, in the absence of such communication, demonstrate a general charitable intent (*Re Atkinson’s Will Trusts* [1978] 1 All E.R. 1275).

WOULD. (1) In a clause of forfeiture of a life interest if the beneficiary shall assign or become bankrupt, “or do or suffer anything whereby the income, if payable to him absolutely, would become vested in any other person,” “would” does not mean “might,” but means “will”; therefore, neither the filing of a bankruptcy petition, nor the execution of a composition deed by the beneficiary, will work a forfeiture; if the words were “may become vested,” the case might be different (*per Cave J., Ex p. Dawes, Re Moon* 17 Q.B.D. 282); but if, in fact, an act of bankruptcy is followed by adjudication, then the forfeiture dates back to the act (*Montefiore v. Guedalla* [1901] 1 Ch. 435, cited BANKRUPTCY). If such a clause provides for forfeiture if anything is “done or suffered” whereby the income “would become payable” to any other person, it will be operative on a bankruptcy receiving order being made against the beneficiary, though nothing further be done in such bankruptcy (*Re Sartoris* [1892] 1 Ch. 11, explained and followed in *Re Laye* [1913] 1 Ch. 298; *Re Forder* [1927] 2 Ch. 291; see also on this case *Re Brewer* [1896] 2 Ch. 503). See

ALIENATION; ASSIGN; SUFFER; TRANSFER. See further **BANKRUPTCY**; *Re Baker* [1904] 1 Ch. 157, cited **CHARGE OR ENCUMBER**.

(2) A had a power of appointment by writing over a life policy; in a memorandum he wrote, "the money from the Equitable Insurance Office I 'would have' equally divided between my daughters"; held, a good execution of the power (*Proby v. Landor* 30 L.J. Ch. 593). In that case Romilly M.R., said, "the word 'would' must be taken to mean 'wish.' "

(3) "Would have had apart from the Act a legal right to compensation," in s.2(1) Indemnity Act 1920 (c. 48): see *Commercial & Estates Co. of Egypt v. Board of Trade* [1925] 1 K.B. 271.

(4) A tortfeasor "who is, or would if sued have been liable," may be ordered to pay contribution to damages under s.6(1) of the Law Reform (Married Women and Tortfeasors) Act 1935 (c. 30); this applies to a tortfeasor who would have been liable if sued within the time limit (*Morgan v. Ashmore, Benson, Pease & Co.* [1953] 1 W.L.R. 418).

WOUND. (1) " 'To wound' means to divide the surface of the body, whether it be an internal—e.g. the inside of the mouth—or an external surface" (Steph. Cr. (9th ed.) 229, citing *R. v. Leonard Smith* 8 C. & P. 173). Wounding may be done with the hand (*R. v. Bullock* L.R. 1 C.C.R. 115). To break a bone, without breaking the skin, *semble*, is not to wound (*R. v. Wood* 4 C. & P. 381). See further *R. v. Owens* 1 Moody, 205; *R. v. Hughes* 2 C. & P. 420.

(2) In the collocation "stab, cut, or wound" (Offences against the Person Act 1828 (c. 31), ss.11, 12), a wounding had to be accomplished by an instrument, because "wound" was there associated with "stab, cut," and as a stab or cut must be made by an instrument, so it was held that "wound" meant an injury (other than a "stab" or "cut") made by an instrument (*per Alderson B.*, *R. v. Jennings* 2 Lewin C.C. 130, explaining *R. v. Stevens* 1 Moody, 409; *R. v. Harris* 7 C. & P. 446). See hereon *R. v. Waudby* [1895] 2 Q.B. 482.

(3) A wound, for the purposes of s.20 of the Offences against the Person Act 1861 (c. 100), is a break in the continuity of the whole skin; the rupture of blood vessels internally is not sufficient (*J.J.C. (a Minor) v. Eisenhower* [1983] 3 W.L.R. 537).

Cp. **MAIM**.

WRAK. "Wrak," in the grant of an island or coast estate in Scotland and standing in connection with "waith" (*i.e.* a derelict), signifies wreck, and not sea ware (*Lord Advocate v. Hebden* 6 Macph. 489).

WRAPPER. "In any wrapper enclosing margarine or on any package" (s.8, Butter and Margarine Act 1907 (c. 21)); the "in" was used in contrast to "on" so that, *semble*, any printed matter put inside any wrapper had to comply with the provisions of the section: see *Williams v. Baker* [1911] 1 K.B. 566.

Stat.Def., Revenue Act 1862 (c. 22), s.28.

See **PAPER WRAPPER**.

WRECK. (1) " 'Wrecke,' or 'varech' (as the Normans, from whom it came, call it) is where a ship is perished on the sea, and no man escapeth alive out of the same. and the ship or part of the ship so perished, or the goods of the ship come to the land of any lord, the lord shall have that as a wrecke of the sea. But if a man, or a dog, or a cat, escape alive, so that the party to whom the goods belong, come within

a yeare and a day, and prove the goods to be his, he shall have them againe, by provision of the statute of Westm. I, c. 4, made in King Ed. I dayes, who therein followed the decree of Hen. I, before whose dayes, if a ship had been cast on shore, torne with tempest, and were not repaired by such as escaped alive within a certaine time, that then this was taken for wrecke” (Termes de la Ley). Cp. Doctor and Student, Di. 2, ch. 51; Hale, *De Jure Maris*, ch. 6; 1 Bl. Com. 290 *et seq.*; DERELICT; see hereon *Dunwich v. Sterry* 1 B. & Ad. 831.

(2) “De wreck de mere” (3 Edw. 1, c. 4)—“wrecke or shipwrecke is an English word, in French *naufnage*, in ancient French *varech*, in Latine *naufragium*, legally *wreccum maris*, wrecke of the sea in legall understanding, is applied to such goods as after shipwreck at sea are by the sea cast upon the land; and therefore the jurisdiction thereof pertaineth not to the lord admirall but to the common law. Although this statute speaketh onely of wrecke, yet this statute extendeth to flotsam, jetsam, and lagan” (2 Inst. 167, citing *Constable’s Case* 5 Rep. 106 a).

(3) The Merchant Shipping Act 1894 (c. 60), s.510, replacing s.2, Merchant Shipping Act 1854 (c. 104), preserves the definition as laid down by *Constable’s Case* thus, “‘wreck’ includes jetsam, flotsam, lagan, and derelict, found in or on the shores of the sea or any tidal water” (see further s.21, Sea Fisheries Act 1867 (c. 45). See hereon *The Zeta* L.R. 4 A. & E. 460). “Timber found floating at sea, without an apparent owner, having drifted from its moorings, is not ‘wreck’ within the meaning of the Act” (1 Maude & P. 643, n. (j), citing *Palmer v. Rouse* 27 L.J. Ex. 437; see also *Legge v. Boyd* 14 L.J.C.P. 138; *Barry v. Arnaud* 2 P. & D. 633). See further *The Gas Float Whitton* [1896] P. 42, affirmed in House of Lords [1897] A.C. 337; 1 Maude & P. 643, 675, 677, 679.

(4) “Wreck or loss of the ship” (s.158, Merchant Shipping Act 1894 (c. 60)): see *Austin Friars S.S. Co. v. Strack* [1905] 2 K.B. 315, and *Sivewright v. Allen* [1906] 2 K.B. 81, both cited Loss; see also *The Olympic* [1913] P. 92; *Horlock v. Beal* [1916] 1 A.C. 486.

(5) “Wreck or loss of a ship” (Merchant Shipping (International Labour Conventions) Act 1925 (c. 42), s.1(1)): see *Barras v. Aberdeen Steam Trawling & Fishing Co.* [1933] A.C. 402.

(6) As to whether cargo can be included in “wrecks of vessels,” see *Vivian v. Mersey Docks* L.R. 5 C.P. 19.

(7) “Wreck” (s.7, Mersey Docks and Harbour Act 1912 (c. xii)): see *The Countess* [1921] P. 279, affirmed with variation, [1922] P. 41; varied, [1923] A.C. 345.

See OWNER; SUNKEN WRECK.

WRIT. A writ is the process by which civil proceedings in the High Court are generally commenced: see ACTION; WRIT OF SUMMONS. Cp. PLAINT; PLEADING; SUMMONS. There are many other kinds of writ, e.g. writ of execution, writ of error, writ for the election of a Member of Parliament, etc., issued in the name of the reigning monarch, for the doing, or not doing, of some act or thing.

WRIT OF ERROR. (1) “Writs of error upon any judgment”; held to include judgments on writs of error, as well as original judgments (*Nisbit v. Rishton* 2 P. & D. 706).

(2) “A writ of error shall not be necessary, or used, in any cause, and the proceeding to error shall be a step in the cause” (s.148, Common Law Procedure Act 1852 (c. 76)); “that appears not to apply to ERROR from an inferior court, but only

to causes in the superior courts" (*Darlow v. Shuttleworth* [1902] 1 K.B. 721, cited INFERIOR COURT).

See ERROR; RECORD. See Criminal Appeal Act 1907 (c. 23), s.20.

WRIT OF EXECUTION. "The term 'writ of execution' includes writs of *fiery facias*, *capias*, *elegit*, sequestration, and attachment, and all subsequent writs that may issue for giving effect thereto" (Dan. Ch. Pr. 654). See also R.S.C., Ord. 42, r. 8.

See EXECUTION.

WRIT OF PROHIBITION. (1) "The writ of prohibition is a judicial writ, issuing from a court of superior jurisdiction and directed to a court of inferior jurisdiction for the purpose of preventing it from usurping a jurisdiction with which it is not legally vested" (*per* McCardie J., in *Turner v. Kingsbury Collieries Ltd.* [1921] 1 K.B. 167).

(2) It will not lie to a county court judge sitting as arbitrator, under Workmen's Compensation Act 1906 (c. 58): see *Turner v. Kingsbury Collieries Ltd.* *sup.* See further *Clifford v. O'Sullivan* [1921] 2 A.C. 570.

(3) An order of prohibition is now issued instead of the writ formerly issued: see R.S.C., Ord. 53.

WRIT OF SUMMONS. Though an originating summons is an action, yet it is not a "writ of summons" within the old R.S.C., Ord. 11, r. 1 (see now the new Ord. 11, r. 1), and no order to serve it out of the jurisdiction can be granted (*Re Busfield* 32 Ch. D. 123). From the judgment of Cotton L.J., in that case, it may be stated that a like rule applies to interpleaders, petitions, and applications to tax solicitors' costs, wherever an order is sought against the person out of the jurisdiction. See also that judgment for review and explanation of *Credits Gerundeuse v. Van Weede* 12 Q.B.D. 171; *Weldon v. Gounod* 15 Q.B.D. 622; *Re Haney* 10 Ch. 275; *Re Bonelli's Co.* L.R. 18 Eq. 655; *Re Naylor* 28 L.T. 18; *Re Maugham* 22 W.R. 748; *Re Mewburn* [1874] W.N. 156. See further *Re Cliff* [1895] 2 Ch. 21; *Re Jellard* 39 Ch. D. 424; *Re Anglo-African Steamship Co.* 32 Ch. D. 348; *Re Nathan Newman & Co.* 35 Ch. D. 1; *Re Liebig* 59 L.T. 315.

See PLAINTIFF.

WRITING. (1) In Acts of Parliament, "expressions referring to writing shall, unless the contrary intention appears, be construed as including references to printing, lithography, photography, and other modes of representing or reproducing words in a visible form" (s.20, Interpretation Act 1889 (c. 63)). See also Bills of Exchange Act 1882 (c. 61), s.2; Local Government Act 1888 (c. 41), s.99.

(2) Prior to these statutory definitions it had been held that a "lithographed" memorial of a Middlesex deed, was a good compliance with s.5 (7 Anne, c. 20), which required memorials to be "put into writing, in vellum or parchment" (*R. v. Middlesex Registry* 7 Q.B. 156). So, the printed name of a party to a contract may be a good signature by him: see SIGNED.

(3) The foregoing are departures from the literal and old meaning of a "writing," for Coke, speaking of a bargain and sale, says, "It must be by writing, and not by print or stamp" (2 Inst. 672). See PRINT.

(4) A pencil writing has always been a sufficient compliance with a statutory or other requirement that the thing to be done shall be IN WRITING (*Geary v. Physic* 7 D. & R. 653).

(5) A will is a "writing" within the meaning of a power to appoint "by writing" (*Lisle v. Lisle* 1 Bro. C.C. 533; *Orange v. Pickford* 27 L.J. Ch. 808). "If a power be created to be executed by a deed, or instrument in writing, although the words seem to indicate instruments *inter vivos* only, yet it is settled that it may be well executed by will" (*per* Westbury C., *Taylor v. Meads* 34 L.J. Ch. 206; see hereon Sug. Pow. 214, where it is stated that the leading case on this doctrine is *Kibbet v. Lee* Hob. 312). But if such a power goes on to prescribe special solemnities for its execution, e.g. that the writing is to be "under SEAL," such requirements must be followed; and unless the power is "in terms" a power to appoint "by will," a non-compliance with its requirements will not be cured by s.10, Wills Act 1837 (c. 26) (*Taylor v. Meads* *sup.*, which overruled *Buckell v. Blenkhorn* 5 Hare, 131, and established the dicta of the L.JJ. in *Collard v. Sampson* 22 L.J. Ch. 729, and the decision of Wood V.-C., in *West v. Ray* 23 L.J. Ch. 447; see hereon 2 Jarm. (8th ed.) 793; Watson Eq. 888); on the other hand, if the alleged appointment be testamentary in form it must comply with the requirements of s.10; see *Re Barnett* [1908] 1 Ch. 402. See SIGNED, SEALED, AND DELIVERED. Cp. WILL. See further TESTAMENTARY DOCUMENT; TESTAMENTARY INSTRUMENT.

(6) In *Re Parker* ([1894] 1 Ch. 707), Kekewich J., held that the power to appoint new trustees "by writing" given by s.31(1), Conveyancing Act 1881 (c. 41) (see Trustee Act 1925 (c. 19), s.36), was not exerciseable by will.

(7) Where a donee of property is to "take and use" a particular surname "in all deeds and writings to which he shall be a party, or which he shall sign," that means as regards "writings," "writings of a formal character," and does not mean letters or visiting cards (*Re Drax* 75 L.J. Ch. 317; see *ibid.*, cited OCCASION).

(8) An author's MS. is a "writing" within the Carriers Act 1830 (c. 68), s.1 (*per* Stonor, County Court Judge, *Lawson v. London & South Western Railway* 73 L.T. 147).

(9) "Writing," i.e. "am writing," at end of a telegram accepting an OFFER, does not preclude the telegram from being an acceptance (*per* Walton J., *Howarth v. Forder* 48 S.J. 52). Cp. SUBJECT TO.

"Writing under his hand": see HIS HAND.

"Writing," "written." Stat. Def., Medicines Act 1968 (c. 67), s.132.

Stat. Def., Interpretation Act 1978 (c. 30), Sched. 1.

See IN WRITING; INSTRUMENT IN WRITING; MEMORANDUM; NOTE.

WRITTEN. See WRITING.

WRITTEN AGREEMENT. See IN WRITING; NOTE; SUBMISSION; ABANDONMENT.

WRITTEN BY. "Written by," appearing on the title page of a song set to music, refers only to the words of the song and do not mean "written and composed by" (*Barnard v. Pillow* [1868] W.N. 94).

WRITTEN CONSENT. (1) As to what is a sufficient "written consent" to an assignment of a lease, see *West v. Dobb* L.R. 5 Q.B. 460. See hereon UNREASONABLY.

(2) "Written consent" of an urban authority to bring forward a building beyond the building line (s.3, Public Health, etc., Act 1888 (c. 52)): see *Mullis v. Hubbard* [1903] 2 Ch. 431. The like as to plans: see *Merrett v. Charlton Kings* 67 J.P. 419.

WRITTEN INSTRUMENT. See INSTRUMENT; INSTRUMENT IN WRITING; WRITING.

WRITTEN INTIMATION. See **INTIMATE**.

WRITTEN WARRANTY. (1) A written description of the quality of goods sold was not a "written warranty" of them within s.25, Sale of Food and Drugs Act 1875 (c. 63) (*Rook v. Hopley* 3 Ex D. 209; *Jiorns v. Van Tromp* 64 L.J.M.C. 171; see *Jeynes v. Hindle* [1921] 2 K.B. 581); nor was a written contract for the "future" supply of goods in their pure state such a warranty, for the warranty under the statute had to accompany each delivery of goods (*Harris v. May* 12 Q.B.D. 97; but see on this case *Elliot v. Pilcher* [1901] 2 K.B. 817), or, if there was such a contract, then it had to be shown that the particular delivery in question was connected therewith and covered thereby (*Robertson v. Harris* [1900] 2 Q.B. 117, but see on this case *Elliot v. Pilcher* sup.): see further *Watts v. Stevens* [1906] 2 K.B. 323; *Harris v. May* (sup.), and *Robertson v. Harris* (sup.), and disapproving *Elliot v. Pilcher* (sup.); see also *Dewey v. Faulkner* [1923] 1 K.B. 315. But the section did not require that the word "warranty" should be used, and whatever amounted in law to a warranty was sufficient if it was in writing, e.g. a sale contract of the "pure" article, or an accompanying invoice wherein the article was called "pure" (*Laidlaw v. Willson* [1894] 1 Q.B. 74). So, if the vessel containing the article was labelled with a warranty of quality, that sufficed (*Farmers Dairy Co. v. Stevenson* 60 L.J.M.C. 70; *Lindsay v. Rook* 63 L.J.M.C. 231), but in such cases there had, in the first instance, to be a written warranty between the parties (*Jiorns v. Van Tromp* sup.).

(2) But s.25, Sale of Food and Drugs Act 1875 (c. 63) only applied where there had been a sale, and did not apply, in the case of goods "imported" into the United Kingdom contrary to s.1, Sale of Food and Drugs Act 1899 (c. 51) (*Kelly v. Lonsdale* [1906] 2 K.B. 486).

(3) A written warranty, under s.25 was not rendered unavailable as a defence by the addition of "without accepting any responsibility after delivery" (*Wilson v. Playle* 88 L.T. 554). Cp. **WITHOUT PREJUDICE**.

(4) The entry of the brand name on the invoice covering the sale of pre-packed frozen chickens was a "written warranty" within the meaning of s.115 of the Food and Drugs Act 1955 (c. 16) (*Rochdale Metropolitan Borough Council v. FMC (Meat)* [1980] 2 All E.R. 303).

(5) A contract to give a written warranty need not be in writing (*Irving v. Callow Part Dairy Co.* 87 L.T. 70).

See **FALSE WARRANTY**; **FOOD**; **WARRANTY**; Cp. **REPRESENT**.

WRONG. (1) "Wrong," in the *McNaghten* rules (10 Cl. & F. 200), which apply to all cases of insanity, whatever might be the nature of the insanity or disease of the mind from which the person accused is suffering, does not mean "wrong" according to the opinion of one man or of a number of people on the question whether a particular act might or might not be justified morally (*R. v. Windle* [1952] 2 Q.B. 826).

(2) The defence of insanity to a charge of cruelty cannot succeed if the person accused knew that what he was doing was morally wrong, even though he did not know that it was legally wrong (*Sofaer v. Sofaer* [1960] 1 W.L.R. 1173).

(3) "Wrong in law" (Courts Act 1971 (c. 23), s.10(2)). A sentence within the Crown Court's discretionary limits is not "wrong in law" for the purposes of this section unless the person questioning it can show it to be harsh and oppressive or so far outside the normal sentence imposed for the offence as to enable the Divisional Court to hold that there must have been an error of law (*R. v. Crown Court of St. Albans, ex p. Cinnamond* [1981] 1 All E.R. 802).

See **TORT**.

WRONGFUL. (1) “Wrongful”: see *per* Bowen L.J., *Mogul Co. v. McGregor* 23 Q.B.D. 598, cited **MALICE**; **IMPROPER**; **INJURE**.

(2) “Wrongful act or default”: see **DEFAULT**. See further *Watson v. Board of Trade* 22 Sc. L.R. 22, and *Brown v. Board of Trade* 28 Sc. L.R. 401, both cited **DEFAULT**; *British Homes Assurance v. Paterson* [1902] 2 Ch. 404, and *Hamlyn v. Houston* [1903] 1 K.B. 81, both cited **ORDINARY COURSE**; *Woolworths Ltd. v. Crotty* 66 C.L.R. 603.

WRONGFULLY. In a pleading in trespass, “wrongfully” does not put the title in issue (*Frankum v. Falmouth* 2 A. & E. 452).

WRONGFULLY AFFECTED. See **INJURIOUSLY AFFECTED**.

WRONGFULLY CLAIMING. “Wrongfully claiming” (s.9, Real Property Limitation Act 1833 (c. 27)): see *Williams v. Pott* L.R. 12 Eq. 149. “Under that section, a lessee for years paying rent to a person ‘wrongfully claiming to be entitled,’ is supposed to be in possession; and a title can only be acquired against the true owner by a wrongful receipt of rents. The same words are not elsewhere used; but I am of opinion that what was said by the learned judge (in *Shaw v. Keighron* Ir. Rep. 3 Eq. 574) is equally true of any other case in which the statute is set up as a bar to the true owner by virtue only of the receipt of rent from tenants in possession. I think that such receipt of rent, in order to exclude the true owner, must always be by a person ‘wrongfully claiming’—and not receiving, or claiming a right to receive, on behalf of the true owner. When the true owner can and does ratify an agency undertaken on his behalf, though without his antecedent authority, the case is the same as if he had himself received the rents” (*per* Selborne C., *Lyell v. Kennedy* 14 App. Ca. 460). See now Limitation Act 1939 (2 & 3 Geo. 6, c. 21), s.9. See “Cestui que trust,” under **CESTUI**; **REPRESENTATIVE**.

WRONGFULLY QUITTING. See **QUIT**.

WROUGHT. A proviso in a coal mining lease, ceasing rent on the coal being worked out “so far as the same can be fairly wrought,” “relates to the possibility of obtaining coal by fair working” (*per* Pollock C.B.), and the question of working at a profit has no bearing (*Griffiths v. Rigby* 25 L.J. Ex. 284).

Cp. **WORKABLE**.

WYDRAUGHT. “A water passage, gutter, or watering place” (Jacob).

WYKE. See **WIKE**.

Y

YACHT. See *The Germania* [1917] A.C. 375, cited NAVIRE DE COMMERCE.

YAIR. In the old statutes against the use of yairs and cruffis in “fresh waters where the sea flows and ebbs,” “yairs” included stakenets (*per* Eldon C., *Dalgleish v. Athol* 5 Dow. 291; see on this case *Horne v. Mackenzie* 6 Cl. & F. 628, cited RIVER.

YARD. (1) A large yard for bonding foreign timber, in which there were a deal shed and two buildings, with saw-pits; held, on the context, not to be a “yard” within a clause, in a railway Act, enabling an owner to insist on the whole being taken if any part of it was required (*Stone v. Commercial Railway* 9 Sim. 621).

(2) “Yard” (Vagrancy Act 1824 (c. 83), s.4) is not to be confined to a yard attached to a dwelling-house (*Goodhew v. Morton* [1962] 1 W.L.R. 210. But it is by nature a small area, and for the purposes of this section cannot comprise a railway siding one mile long and a quarter of a mile wide. (*Quatromini v. Peck* [1972] 1 W.L.R. 1318).

Stat. Def., Weights and Measures Act 1963 (c. 31), Sched. 1, Part 1.

See SUPERFICIAL YARD; YARDS.

YARDLAND. “*Una virgata terræ*, a yard-land, is in some countries 10, in some 20, in some 24, in some 30, etc.” (Co. Litt. 5 a; the “etc.” here means “acres,” Touch 93). “By the grant therefore of *virgatum terræ*, or a yardland, will pass that quantity of land, meadow and pasture, that is called by this name. And so by the grant of half a yard or a quarter of a yard land” (Touch. 93). See further Cowel; Jacob; Elph. 567, 631.

YARDS. (1) The parcels in a conveyance were described by reference to coloured parts of a plan. A yard, delineated but not coloured in the plan, was held to pass under the general word “yards” (*Willis v. Watney* 51 L.J. Ch. 181). See GENERAL WORDS.

(2) “Yards and gardens,” “yards, courts, and curtilages”: see *Browne v. Furtado* [1903] 1 K.B. 723, cited DWELLING-HOUSE.

YEAR. (1) “A year is the time wherein the sun goes around his compass through the twelve signs, viz. 365 days and about 6 hours. But in Leap Year the statute (24 Geo. 2, c. 23) enacts that the year shall consist of 366 days; so that in *R. v. Wormingall* (6 M. & S. 350), upon a question of yearly hiring, Lord Ellenborough said, ‘In those years which consist of 366 days, a hiring and service for a year, must be for that same number of days, in like manner as when the year was 365 days, it must have continuance during that number’ ” (Dwar. 693; see further Jacob). In hiring and service, within Relief of the Poor Act 1697 (c. 30), s.4, a hiring on one day to the day next before its anniversary was a “year” of 365 days, for the fraction of a day at the beginning and also at the end of the term counted as a day; a rule which was applied to a pauper settlement by occupation of a tenement “for one whole year, at least,” under Poor Relief (Settlement) Act 1831 (c. 18), s.1 (*R. v. St. Mary, Warwick* 22 L.J.M.C. 109).

(2) An “agreement not to be performed within the space of one year from the making thereof” (s.4, Statute of Frauds) means within 12 calendar months from that date (*Bracegirdle v. Heald* 1 B. & Ald. 722; *Snelling v. Huntingfield* 1 Cr. M. & R. 20). See further NOT TO BE; EXCEEDS; PERFORMED; NOTE.

(3) Under the Companies Act 1862 (c. 89) ss.26, 49, Companies Act 1985 (c. 6), ss.363, 366, the annual list of members, and the general meetings, which are to be sent, or held, “once at least in every year,” the word “year” means the period of time from January 1 to December 31, not a period of 12 calendar months calculated from the registration of the company (*Gibson v. Barton* L.R. 10 Q.B. 329; *Edmonds v. Foster* 33 L.T. 690).

(4) Where a company’s articles give the directors a stated sum “by way of remuneration in each year,” nothing can be claimed except for a complete year; *secus*, if the phrase were “at the rate of” so much for each year (*Salton v. New Beeston Co.* [1899] 1 Ch. 775); and so, if the words are so much “per annum” there must be services for a complete year (*Re Central De Kaap Co.* 69 L.J. Ch. 18). See further *Re London & Northern Bank, McConnell’s Case* [1901] 1 Ch. 728; *Inman v. Ackroyd* [1901] 1 K.B. 613; *Moriarty v. Regent’s, etc. Co.* [1921] 2 K.B. 766. Cp. *Caridad Copper-Mining Co. v. Swallow* [1902] 2 K.B. 44, cited DETERMINE.

(5) In a corporation charter, “year” has been held to mean a mayoralty, though less than a year (*R. v. Swyer* 10 B. & C. 486).

(6) In a theatrical engagement, “year” means “season” (*Grant v. Maddox* 16 L.J. Ex. 227). In that case Alderson B., said, “The contract is that the plaintiff is to be paid for three years, at a salary of £5, £6, and £7 per week in those years; that means, according to the universal understanding amongst actors, that she is to be paid so much per week. during every week that the theatre is open.”

(7) Hiring of horses by the year, determinable on a quarter’s notice: see *Tilling v. James* 22 T.L.R. 599.

(8) A covenant in a lease not to assign or underlet “for a longer period than a year” is not broken by a sublease for a year commencing at a future date (*Croft v. Lumley* 6 H.L. Ca. 672); but, *semble*, a lease under a power must take effect at once (*ibid.*, 6 H.L. Ca. 737).

(9) “In each year” in a covenant meant in each calendar year (*I.R.C. v. Hobhouse* [1956] 1 W.L.R. 1393).

(10) “One year’s wages”: see SERVANT; *Re Ravensworth* [1905] 2 Ch. 1; distinguished in *Re Sheffield* 80 L.T. 313, where it was held that a bequest to servants of “the amount of one year’s wages in addition to what may be then actually due to them for wages” was not confined to servants hired by the year, but extended to servants engaged at weekly wages.

(11) Dead year is the year from the death of a deceased for winding-up his estate, during which time his executor or administrator cannot be sued for a legacy or a share (*Wood v. Penoyre* 13 Ves. 333; *Benson v. Maude* 6 Mad. 15).

(12) “In that year”: see *Murray v. Inland Revenue Commissioners* [1918] A.C. 541.

(13) Condition of establishing title “within one year”: see *Re Hartley* 34 Ch. D. 742.

(14) “Space of one whole year” (s.58, Pluralities Act 1838 (c. 106)): see *Bartlett v. Kirwood* 23 L.J.Q.B. 9; WHOLE.

(15) “Year of assessment” (Finance Act 1926 (c. 22), s.30): see *Goodlass Wall and Lead Industries v. Atkinson* [1950] 2 All E.R. 314.

(16) Where reward for services was in question “year of assessment” in r. 1,

Sched. E of the Income Tax Act 1952 (c. 10), meant “in respect of services rendered during the year of assessment” (*Heasman v. Jordan* [1954] Ch. 744).

“By the year”: see **VALUE**.

“One year’s stipend”: see **ONE**.

“Current year”: see **CURRENT**.

“End of the year”: see **END**.

“Financial year”: see **FINANCIAL**.

“Savings bank year”: see **SAVINGS**.

“School year”: see **SCHOOL**.

Commencement of year: see **MICHAELMAS**.

See **HALF A YEAR**; **QUARTER OF A YEAR**; **SUCCEEDING**; **TENANT FOR YEARS**; **YEAR TO YEAR**; **TWELVEMONTH**.

YEAR AND A DAY. In computing a year and a day after an event, the day on which the event happens is counted as the first day (Co. Litt. 255 a; Steph. Cr. (9th ed.) 210). See hereon Cowel; Jacob, *Year*. See *R. v. Dyson* [1908] 2 K.B. 454, cited **SUBSTANTIAL**.

YEAR CERTAIN. A tenancy for years, determinable on lives, is not for “any term or number of years certain,” within s.1 (1 Geo. 4, c. 87) (*Doe d. Pemberton v. Roe* 5 L.J.O.S.K.B. 289, cited **TERM CERTAIN**).

Letting for “one year certain, and so on from year to year”: see **YEAR TO YEAR**.

YEAR, DAY, AND WASTE. See Cowel; Jacob, *Year*; *Termes de la Ley*, *An*, *Jour*, and *wast*.

YEAR TO YEAR. (1) “A tenancy from year to year is a lease for a year certain, with growing interest during every year thereafter, springing out of the original contract and part of it” (*per* Parke B., in *Oxley v. James* 13 M. & W. 210, at p. 214). “Such a tenancy is for a year certain, terminable by either side by six months’ notice to quit, expiring at the end of the year, involving, if such notice is not given, another year’s tenancy terminable in the same way” (*per* Scrutton L.J., in *Gray v. Spyer* [1922] 2 Ch. 22). See also *Northchurch Estates Ltd. v. Daniels* [1946] 2 All E.R. 524.

(2) “Where parties agree for a tenancy ‘from year to year,’ and possession is taken, such a tenancy is thereby created, and may be determined at the end of the first or any subsequent year of the tenancy by a regular notice to quit (*Doe d. Clarke v. Smaridge* 7 Q.B. 957; *Doe d. Plumer v. Mainby* 10 Q.B. 473). But where a tenancy is created ‘for one year certain, and so on from year to year,’ it enures as a tenancy for two years at the least, and cannot be determined at the end of the first year (*Doe d. Chadborn v. Green* 1 P. & D. 454; *Cannon Brewery v. Nash* 77 L.T. 648; *R. v. Chawton* 1 Q.B. 247; see further *Lutterel v. Weston* Cro. Jac. 308); though it may be determined by notice to quit at the end of the second or any subsequent year of the tenancy; see hereon *per* Palles C.B., *R. v. Cork Justices* [1906] 2 Ir. R. 355. The tenancy may be for eighteen months certain and thereafter from year to year if six months notice of termination is required: see *Addis v. Burrows* [1948] 1 K.B. 444. A demise ‘for a year,’ or ‘for one year certain,’ does not create a tenancy from year to year, nor require any notice to quit at the end of the year (*Cobb v. Stokes* 8 East. 358, 361; *Wilson v. Abbott* 3 B. & C. 88; *Johnstone v. Hudleston* 4 B. & C. 937)” (Woodf. (24th ed.) 269).

(3) “Person having no greater interest than as tenant for a year, or from year to

year" (s.121, Lands Clauses Consolidation Act 1845 (c. 18)): see *R. v. Kennedy* [1893] 1 Q.B. 533.

(4) It is the alleged interest the value of which has, under s.121, Lands Clauses Consolidation Act 1845 (c. 18), to be assessed by the justices, and they have no right to try the title thereto; but it is a condition precedent to their making an assessment that the claimant has been "required to give up possession . . . before the expiration of his term or interest" (*Great Northern & City Railway v. Tillett* [1902] 1 K.B. 874).

(5) "Year to year" (Agricultural Holdings (England) Act 1883 (c. 61) (see s.61), and Market Gardeners Compensation Act 1895 (c. 27) (see s.1)). Within that definition a yearly letting was "from year to year" notwithstanding that it might be determined by a short notice on any day of the year (*King v. Eversfield* [1897] 2 Q.B. 475). But see now Agricultural Holdings Act 1948 (c. 63), s.94. See further *Re Kedwell and Flint* [1911] 1 K.B. 797, cited MARKET GARDEN.

(6) The expression "from year to year," relating to a tenancy of land, imports certain incidents, *e.g.* a right to determine the tenancy by six months' notice, the same incidents are not necessarily imported into a commercial agreement relating to the provision of advice and the performance of services (*Re Barker Sportcraft's Agreements* 91 S.J. 409).

"Less than a tenancy from year to year": see LESS.

YEARLING. "If a breeder of horses should bequeath 'his yearlings,' and survive into the next year, the yearlings of the latter year, and not those of the former (now two-year-olds), would probably be held to pass" (1 Jarm. 331, n. (g)).

YEARLY. (1) " 'Yearly' is only a word of calculation" (*per* Campbell C.J., *Doe d. King v. Grafton* 18 Q.B. 501).

(2) Where the agreement is to pay so much a year, whether it be for rent or services, and nothing is said as to shorter payments, then nothing becomes due till the end of each year of the agreement; and, if the agreement be in writing, evidence cannot be given of an oral agreement to pay the payments quarterly or in some other mode (*Giraud v. Richmond* 15 L.J.C.P. 180, and cases there cited by Byles, in argument; but see as to the latter part of this proposition, *Ridgeway v. Hungerford Market Co.* 3 A. & E. 171). Cp. QUARTERLY. See further *Salton v. New Beeston Co.* [1899] 1 Ch. 775, cited YEAR.

(3) "If a man has a power to make leases, reserving the ancient yearly rent 'annually,' yet if it were reserved upon a day before the year was up (as if the year ended at Christmas and it was reserved at Michaelmas) it would be well, pursuant to the power" (*per* Powell J., *R. v. Weston* Raym. Ld., 1198; adopted and applied in House of Lords, *Rutland v. Doe* 12 M. & W. 397, 400, in which last case Lord Campbell doubted whether a reservation of rent at the beginning of each year would be good, because that would tend to a lesser rent being paid).

(4) "The usual 'yearly' rent means the yearly rent of so many half-yearly or quarterly payments in the year" (*per* Abbott C.J., *Doe d. Shrewsbury v. Wilson* 5 B. & Ald. 382). And the better opinion seems to be that in executing a power of leasing which requires the reservation of "yearly" rents, the days of payment, how many and what, are immaterial so long as the rent is a yearly one (*Doe d. Douglas v. Lock* 4 L.J.K.B. 117, 119; but in that case after an elaborate review of the somewhat conflicting authorities hereon, the court refrained from deciding this point and disposed of the case on other grounds). See hereon Sug. Pow. 793–795.

(5) In *Doe d. Shrewsbury v. Wilson* (sup.), the words "made payable yearly"

were considered the same as if the words had been “payable every year.” “In common parlance the word ‘yearly’ in such powers means not a payment of rent once a year, but that the same is to be paid ‘in or during’ every year. In one sense a rent reserved half-yearly is payable yearly, because it is payable during the year” (Sug. Pow. 795).

See **ANNUALLY**; **HALF-YEARLY**; **PER ANNUM**; **QUARTERLY**.

YEARLY INTEREST. (1) Interest upon a loan by a banker to a customer for a period less than a year, was not within “any yearly interest of money, or any annuity, or other annual payment,” within s.40, Income Tax Act 1853 (c. 34); therefore, the customer was not entitled to deduct income tax from such interest (*Goslings v. Blake* 23 Q.B.D. 324, distinguishing *Bebb v. Bunny* 1 K. & J. 216, and *Dinning v. Henderson* 19 L.J. Ch. 273). See now Income and Corporation Taxes Act 1970 (c. 10), s.109, where the words used are “any interest of money, whether yearly or otherwise.” So, interest included in the periodical payments of a member of a building society and not without difficulty distinguishable, was not “yearly interest of money” within s.102, Income Tax Act 1842 (c. 35); but it was “interest of money” for which the society was assessable under para. 3, Sched. D, s.2, Income Tax Act 1852 (c. 34) (*Leeds Building Society v. Mallandaine* [1897] 2 Q.B. 402), and that latter rule applied to interest on a bank deposit (*Clerical Medical & General Life Assurance v. Carter* 22 Q.B.D. 444); cp. *Foley v. Fletcher* 28 L.J. Ex. 100, and *Scoble v. Secretary for India* [1903] 1 K.B. 494, both cited **ANNUITY**.

(2) As to yearly interest within s.105, Income Tax Act 1842 (c. 35), see *Garston Overseers v. Carlisle* [1915] 3 K.B. 381; *Perrin v. Dixon* 45 T.L.R. 621, followed *Foley v. Fletcher*. See further *Re Cooper* [1911] 2 K.B. 550; *R. v. Special Commissioners of Income Tax* [1923] 1 K.B. 393. See now Income and Corporation Taxes Act 1970 (c. 10), s.360.

(3) Interest paid on a loan which was made as an investment on a mortgage of property was “yearly interest of money” within the meaning of s.169 of the Income Tax Act 1952 (c. 10) (*Corinthian Securities v. Cato* [1970] 1 Q.B. 377).

(4) “Interest of money” (Income Tax Act 1918 (c. 40), Sched. D, para. 1 (b), now Income and Corporation Taxes Act 1970 (c. 10), s.108) included interest awarded on a debt by a judgment under the Law Reform (Miscellaneous Provisions) Act 1934 (c. 41), s.3(1), notwithstanding that (a) it was awarded as compensation; (b) it was not a recurrent payment; and (c) the judgment was for a single sum consisting of the debt and interest (*Riches v. Westminster Bank* [1947] 1 All E.R. 469). It also included premiums paid by company on redemption of notes issued by it which did not carry interest (*Davies v. Premier Investment Co.* 62 T.L.R. 35).

YEARLY PRODUCE. See **PRODUCE**; **FREE ANNUAL**.

YEARLY RENT. See **CLEAR**; **FREE YEARLY**.

YEARLY VALUE. See **ANNUAL VALUE**; **CLEAR**; **FREE LAND**; **VALUE**; **FREE YEARLY**.
Stat. Def., Representation of the People Act 1949 (c. 68), s.5(7)(d).

YEARS. When successive: see **TERM**.

YELVERTON'S ACT. For extending to Ireland much of the statute law of England (21 & 22 Geo. 3, c. 48), amended by s.1, Crown Lands (Ireland) Act 1826 (c. 68). See further **POYNING'S ACTS**.

YEOMAN. “Camden placeth yeomen next in order to gentlemen” (Jacob). If that be so, and it seems a gentleman is “one who has nothing to do,” then Camden’s definition of yeoman is a little vague. Still the word has for centuries been used as an ADDITION to a person’s name (*Termes de la Ley, Additions*). Blackstone says, “a yeoman is he that hath free land of 40s. by the year; who was antiently thereby qualified to serve on juries, vote for knights of the shire, and do any other act where the law requires one that is *probus et legalis homo*” (1 Bl. Com. 406, 407, citing 2 Inst. 668).

YEW TREES. See NUISANCE.

YIELD. (1) “Remove from, or yield up, the possession” of an inn (s.14, Alehouse Act 1828 (c. 61)); see *R. v. Wiltshire Justices* 57 J.P. 454.

(2) “Is yielding or will yield” (Increase of Rent and Mortgage Interest (Restrictions) Act 1920 (c. 17), s.9(1)); see *Roppel v. Bennett* [1949] 1 K.B. 115; *Roirdan v. Minchin* [1949] 1 K.B. 137.

(3) “Yield of natural fibre” in a contract meant the total yield of fibre, whether tow or line (*Forres (Lord) v. Scottish Flax Co. Ltd.* [1943] 2 All E.R. 366).

YIELDING AND PAYING. These words, with which the reddendum clause in a lease is usually commenced, created by their own vigour a covenant by the lessee to pay the rent reserved (*Hellier v. Casbard* 1 Sid. 266; *Porter v. Swetnam* Style, 406; *Bower v. Hodges* 22 L.J.C.P. 194; see further Elph. 419, 420). But they do not create a CONDITION precedent (see PAYING).

YOU. (1) “You,” as a description of a lessee in an agreement to grant a lease, is good; it is as good as proprietor, for a vendor, in a vendor and purchaser contract (*per* Farwell J., *Carr v. Lynch* [1900] 1 Ch. 613).

(2) “You,” in a question in a proposal form for an insurance policy, refers only to “you the present proposer,” and not to “you or either of you”: see *Becker v. Marshall* 11 Ll.L. Rep. 114.

(3) “You shall take reasonable precautions to prevent accidents and . . . not use improper or inadequate gear,” in a contract between shipowners and stevedores: see *T. F. Maltby v. Pelton Steamship Co.* [1951] 2 All E.R. 954, cited USE.

(4) “You,” in a writ to several defendants, is construed distributively (*Engleheart v. Eyre* 2 Dowl. 145).

YOUNG MAN. Young man, young woman: see *per* Wills J., *R. v. Cockerton* [1901] 1 K.B. 340, cited CHILD. “Young men,” “young women,” in Unemployment Insurance Act 1927 (c. 30), s.2), meant employed persons who had attained the age of 18 years, but had not attained the age of 21 years.

YOUNG PERSON. (1) “Young person” (Factory and Workshop Act 1901 (c. 22), s.156, now Factories Act 1961 (c. 34), s.176), on which see *Stevenson v. Goldstraw* [1906] 2 K.B. 298.

(2) A boy who was under sixteen when he committed a murder, but who was more than sixteen when he was tried, was held not to be a young person within the Children Act 1908 (c. 67), and therefore competent to be sentenced to death: see *R. v. Fitt* [1919] 2 Ir. R. 35.

Stat. Def., Shops Act 1950 (c. 28), s.74; Mines and Quarries Act 1954 (c. 70), s.182(1); Factories Act 1961 (c. 34), s.176; Offices, Shops and Railway Premises

Act 1963 (c. 41), s.18(2); Children and Young Persons Act 1969 (c. 54), s.70; Bail Act 1976 (c. 63), s.2(2).

See BOY; CHILD; GIRL; INFANT; WOMAN; YOUTH.

YOUNG SALMON. "Young of salmon," Salmon and Freshwater Fisheries Acts, includes "all young of the salmon species, whether known by the names of fry, samlet, smolt, smelt, skirling or skarling, par, spawn, pink, last spring, hepper, last brood, gravelling, shed, scad, blue fin, black tip, fingerling, brandling, brondling, or by any other name local or otherwise" (Salmon Fishery Act 1861 (24 & 25 Vict., c. 109), s.4).

See FRY; SALMON.

YOUNGER; YOUNGEST. (1) Prima facie "younger" or "youngest" has reference to the order of birth (2 Jarm. (4th ed.) 213; *Bootle v. Scarisbrick* 1 H.L. Ca. 167).

(2) An "only" child would take under a bequest to a person's "youngest child" (*Emery v. England* 3 Ves. 232); see 3 Jarm. (8th ed.) 1727.

(3) "Younger branches" of a family: see *Doe d. Smith v. Fleming* 5 L.J. Ex. 74; 3 Jarm. (8th ed.) 1577.

(4) "Younger children" are those which were such at the death of the intestate or heir in possession (*per Hatherley C., Catton v. Mackenzie* L.R. 2 H.L. Sc. & D. App. 203). See further *Mason v. Westoby* 42 Ch. D. 590; *Re Prytherch* *ibid.* 591.

(5) "Where the estate is settled on the eldest son, and, subject to that, a power is given of appointing portions to the younger children, a younger child who becomes the eldest before receiving his portion, is not within the power (*Chadwick v. Doleman* 2 Vern. 528; *Teynham v. Webb* 2 Ves. sen. 198; see also *Lincoln v. Pelham*, *Bowles v. Bowles*, *Leake v. Leake* 10 Ves. 166, 177, 477; *Savage v. Carroll* 1 Ball & Beatty, 265; *Matthews v. Paul* 3 Swanst. 328; *Peacock v. Pares* 2 Keen, 689); but he must become an eldest or only son in the sense of the settlement, although not fully expressed, to exclude him from a portion; that is, he must take the estate provided by the settlement for the eldest or only son (*Spencer v. Spencer* 8 Sim. 87), and this even where the settlement expressly provides that the portion of a younger son becoming the eldest son in the lifetime of his father shall accrue to the survivors; therefore, if the father and his eldest son bar the estate tail and remainders, and dispose otherwise of the estate, the second son, although he may become, by his brother's death without issue in his father's lifetime, the eldest son entitled according to the settlement will still be entitled to his portion as a younger son (*Macoubrey v. Jones* 2 K. & J. 684; see further *Re Fitzgerald* [1891] 3 Ch. 394, *inf*; *Re Wrottesley* [1911] 1 Ch. 708). This is the exception; but as to the general rule, where a power was given to appoint a sum amongst younger children, provided that the eldest son, or the son possessing the estate should have no share of it, and an appointment was made, *nominatim*, to Anthony, the second son, and the other younger children, and, after the appointment, Anthony became the eldest son by the death of his elder brother, and the estate descended upon him, Lord Thurlow held that Anthony could not take any part of the fund, although the appointment was not revoked (*Broadmead v. Wood* 1 Bro C.C. 77)"; Sug. Pow. 678, 679. See further *ibid.* 620, 693; Elph. ch. 24; ELDEST.

(6) On the other hand, the representatives of the eldest son ordinarily become entitled to a younger son's portion if he dies before the time fixed by the settlement for the distribution of the portions fund; but they are not so entitled if, as remainderman in tail, the eldest son has joined in a disentailing deed, and in raising money by mortgage of the estate out of which money he has received a substantial sum for

himself, for then, in effect, he would be taking a double portion (*Collingwood v. Stanhope* L.R. 4 H.L. 43; *Re Fitzgerald* [1891] 3 Ch. 394).

(7) As a general rule and where there is no special direction, the class of younger children "cannot be ascertained till the period of distribution" (*per Romilly M.R., Re Bailey* L.R. 9 Eq. 491).

See ENTITLED IN POSSESSION.

YOUR. As to effect of contract for "your" wool, or other specified commodity, see *Macdonald v. Longbottom* 28 L.J.Q.B. 293; 29 *ibid.* 256.

YOUR CLIENT. See CLIENT.

YOUTH. In one of the repealed Acts relating to lace factories, a "youth" was defined "to mean a male of 16 and under 18 years of age" (Lace Factories Act 1861 (c. 117), s.4).

See YOUNG PERSON.

